NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION

REQUEST FOR PROPOSAL (RFP)

DESIGN-BUILD SERVICES FOR
Interstate 93 Exit 4A Project

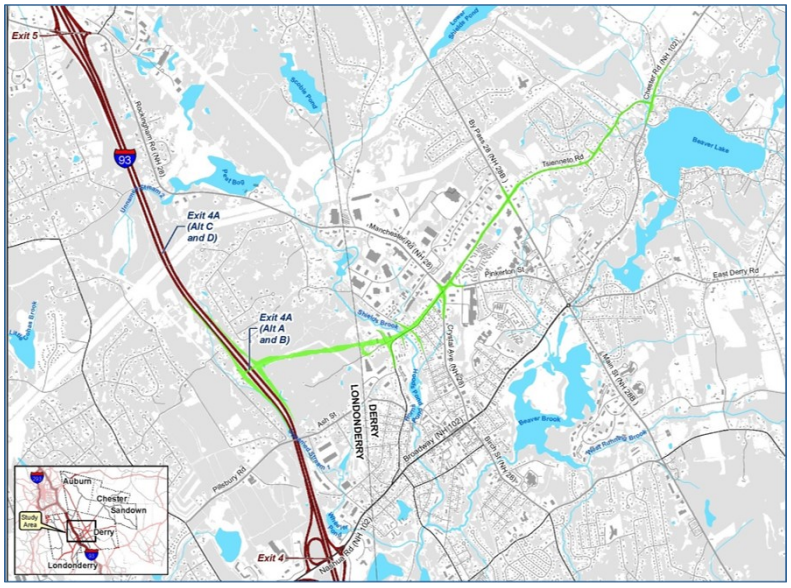
DERRY-LONDONDERRY, NH –

NHDOT Project Number: 13065

Federal Project Number IM-0931(201)

<u>Volume I</u>

<u>Instructions to Proposers</u>



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May 12, 2020

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Exhibit A – Definitions and Acronyms

Exhibit B - Technical Proposal Instructions

Exhibit C – Price Proposal Instructions

Exhibit D – Required Forms

Exhibit E – Summary of Proposal Contents

Exhibit F - Form of Stipend Agreement

Instructions to Proposers

1 GENERAL INFORMATION

This Request for Proposals (as amended from time to time, the "RFP") is issued by the New Hampshire Department of Transportation ("NHDOT") to seek competitive proposals (individually a "Proposal" and collectively, "Proposals") for design and construction of the Interstate 93 Exit 4A Project ("Project") as more specifically described herein and in the form of the Design-Build Contract ("Contract") and the Technical Provisions ("TP") included in this RFP.

NHDOT is issuing the RFP to those Proposers who were shortlisted based on NHDOT's evaluation of Statements of Qualifications ("SOQs") delivered to NHDOT on March 27, 2019 in response to the Request for Qualifications for the Project issued on January 16, 2019 (as amended, the "RFQ").

Proposers must comply with these Instructions to Proposers ("ITP") during the procurement and in their responses to the RFP. Proposers shall also take the Project goals identified in Section 1.2 below into consideration in drafting their Proposals.

All forms identified in this ITP are found in Exhibit D unless otherwise noted. All times in this ITP are Eastern Standard Time (EST) or Eastern Daylight Savings Time (EDT), as applicable.

1.1 DEFINITIONS

Refer to Exhibit A hereto for the meaning of various capitalized terms and acronyms used herein, and refer to Appendix 1 to the Contract for the meaning of capitalized terms and acronyms used, but not defined herein or in Exhibit A of this ITP.

1.2 PROJECT GOALS

NHDOT's primary goals in connection with this procurement and the Project include

A) Minimize impact on the traveling public during Project construction;

B) Minimize impacts to the surrounding environment during all construction activities;

C) Minimize future maintenance costs;

D) Development of a constructability schedule that will allow for early release of design for the I-93 bridge and access road toward Madden Road connection;

E) Initiate construction of Phase 1 (I-93 to Folsom Road) of the project by August 17, 2021;

F) Complete all phases of the Project by June 27, 2024;

G) Achieve completion of the Intermediate Completion Date by the number of days beyond NTP 1 ~~November 15, 2023~~ as specified in the Contract Section 17;

H) Achieve completion of Interim Milestone #1 and Interim Milestone #2 by the number of days beyond NTP1 ~~March 19, 2021 and April 10, 2023, respectively,~~ as specified in the Contract Section 17;

I) Design and construct a high-quality Project with improved roadway safety that accommodates today's and future traffic volumes, and pedestrians/bicyclists as defined within the Project scope;

J) Maintain good public relations with all project shareholders during construction through an effective public information program and efficient maintenance of traffic;

K) Implement an effective safety program; and

L) Acquisition of needed Right-of-Way along project limits, excluding complete acquisitions.

1.3 GENERAL PROJECT DESCRIPTION AND SCOPE OF WORK

1.3.1 General Project Description

The Towns of Derry and Londonderry (the Towns) and the New Hampshire Department of Transportation (NHDOT), in cooperation with the Federal Highway Administration (FHWA), are contracting design and construction services for the I-93 Exit 4A Project.

The Project consists of a new interchange on I-93 in the Town of Londonderry, approximately onemile north of Exit 4. The new diamond interchange will only provide access to the east side of I-93. A 1-mile connector roadway will be built on new alignment from the interchange to Folsom Road, near the intersection of North High Street and Madden Road, in the Town of Derry. Folsom Road, and subsequently Tsienneto Road, would be upgraded, and the intersections would be improved. In total, the Proposed Project corridor from I-93 to the intersection of Tsienneto Road and NH Route 102/Chester Road would be approximately 3.2 miles. Refer to Figure 1-1 for the Project Location Map.

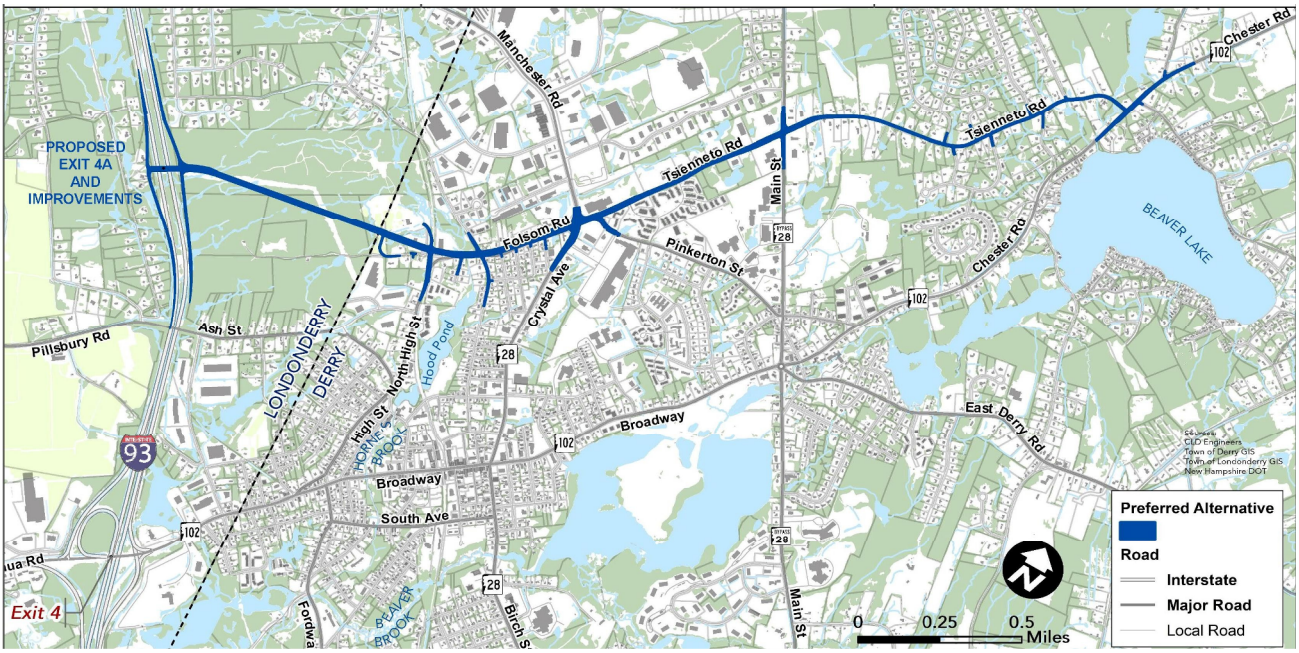

Figure 1-1: Project Location Map

The purpose of the Project is to reduce congestion to improve safety along NH 102, from I-93 easterly through downtown Derry and to promote economic vitality in the Derry/Londonderry area.

The scope of work includes the following primary elements:

1. A new diamond ~~or diverging diamond~~ interchange on I-93, including a new bridge over I-93. The interchange shall be designed to accommodate an ultimate 8-lane cross section on I-93. Widening I-93 to an 8-lane cross section will be done by a separate project.
2. Soundwalls along both sides of I-93 in the interchange area.
3. New 5 or 6-lane connector roadway on new location from the interchange to Folsom Road. Approximately 1 mile in length.
4. Underpass bridge for the rail-trail corridor near the North High Street intersection.
5. Widening and reconstruction of Folsom Road on a shifted alignment to a 6 or 7-lane cross section between Franklin Street and NH 28 (Crystal Avenue/Manchester Road). Approximately 0.3 miles in length.
6. Widening and reconstruction of Tsienneto Road on existing alignment to a 3-lane or 5-lane cross section between NH 28 (Crystal Avenue/Manchester Road) and NH 28 Bypass (North Main Street). Approximately 0.7 miles in length.

7. Widening and reconstruction of Tsienneto Road to a 2-lane or 5-lane cross section from NH 28 Bypass (North Main Street) to NH 102 (Chester Road). Approximately 1.1 miles in length with minimal changes in alignment and profile.
8. Widening and reconstruction of NH 102 (Chester Road) to a 3 or 4-lane cross section near the Tsienneto Road intersection. Approximately 0.4 miles in length.
9. New bridges at connector road over Shields Brook and Tsienneto Road over Tributary E.
10. New traffic signals at 7 intersections. Traffic signal upgrades at 2 existing signalized intersections with interconnected communications and traffic coordination.
11. Stormwater treatment throughout the project area to meet MS4 requirements.
12. Identification and relocation of all impacted utilities, including an electric transmission line in the interchange area.
13. Design and construction of Intelligent Transportation Systems (ITS) infrastructure;
14. Acquire necessary Right-of-Way (ROW) and easements for all non-full acquisition parcels. Full acquisitions will be acquired by the NHDOT.

1.3.2 Scope of Work

Design-Builder's work ("Work") generally includes all work and efforts required to design and construct the Project in accordance with the requirements of the Contract Documents. A more specific description of the scope of the Work is set forth in the Technical Provisions.

1.3.3 Project Environmental Status

A Final Environmental Impact Statement/Section 4(f) Evaluation has been submitted and approved by FHWA under the National Environmental Policy Act (NEPA), and a Record of Decision was issued on February 3, 2020.

The Project will require several environmental, utility, and local permits/approvals. NHDOT is responsible for obtaining the environmental permits described in Table 6-1 of the Technical Provisions (unless noted otherwise). Utility permits and/or local permits will be the responsibility of the Design-Build team.

Though NHDOT may not have received final environmental permits when the RFP is

issued, NHDOT expects to have permit conditions reasonably well defined by that time. NHDOT and FHWA have completed the NEPA process and expect to have acquired all of the necessary environmental permits before the commencement of construction. However, anticipated permit issuance dates may change depending on design and other factors. As final design proceeds, the Design-Builder may be required to support the preparation of any remaining permits as needed, and may be required to prepare permit amendments or modifications to reflect Design-Builder changes from the BTC, NHDOT will submit the permit applications or request for more information. Additional permits or permit amendments may affect the Project design and schedule. Table 6-1 summarizes the anticipated required permits/approvals to be acquired by NHDOT and their associated status.

1.4 PROCUREMENT SCHEDULE

The following represents the current procurement schedule:

Milestone	Date	Time
Issuance of Record of Decision (ROD) by FHWA	February 3, 2020	-
Issuance of Draft Request For Proposals (RFP)	February 13, 2020	4:00 PM
Last date for Proposers to submit Name of Proposer Authorized Representative	February 20, 2020	4:00 PM
One-on-One Meetings #1 (Mandatory) (one per team)	March 9-13, 2020	TBD
Final Date for Receipt of Design-Build Teams' Questions on Draft RFP	April 9, 2020	4:00 PM
Issuance of Final RFP	May 12~~April 23~~, 2020	4:00 PM
One-on-One Meetings #2 (Contract Clarifications and potential ATC Discussions)	June 1-4~~May 11-15~~, 2020	TBD
Last Date for Submittal of Key Personnel	June 8~~May 21~~, 2020	4:00 PM

Last Date for Proposer Submittal of Executed Stipend Agreement	June 12~~May 28~~, 2020	4:00 PM
Final One-on-One Meetings #3 (Overview of proposed ATCs)	June 15-18~~May 24-29~~, 2020	TBD
Last Date for Submittal of Information Concerning Escrow Agent	June 15~~May 24-29~~, 2020	TBD
Deadline for Formal Submission of ATC	June 25~~11~~, 2020	12 Noon
NHDOT Response to ATCs	July 9~~June 18~~, 2020	4:00 PM
Last Date to Submit Questions on RFP	July 9~~June 25~~, 2020	4:00 PM
NHDOT Final Response to Submitted Questions	July 23~~7~~, 2020	4:00 PM
NHDOT Issuance of Final RFP Addendum (if needed)	July 27~~9~~, 2020	4:00 PM
Submission of Technical Proposal and Price Proposal	August 13~~6~~, 2020	12 Noon
Escrowed Proposal Documents (EPDs) Due Date	August 18~~136~~, 2020	2:00 PM
Price Proposal Opening & Apparent Best Value Determination	September 3~~August 18~~, 2020	TBD
Issuance of Intent to Award Letter	September 4~~August 19~~, 2020	-
Contract Award by Governor and Executive Council (G&C)	November 4,~~October 28,~~ 2020	-
Issuance of NTP1 by NHDOT	November 4,~~October 28,~~ 2020	-

All dates set forth above and elsewhere in the RFP are subject to change, in NHDOT's sole discretion, by Addendum.

1.5 DOCUMENTS COMPRISING THE RFP

The RFP Documents consist of the volumes listed below, and any other documents that may be issued by Addendum, as such documents may be amended and supplemented.

(a) Volume I – This ITP (including exhibits and forms);

(b) Volume II – the Contract Documents (Book 1), Technical Provisions (Book 2), and Special Provisions (Book 3);

(c) Reference Materials NHDOT web page https://www.nh.gov/dot/projects/derrylondonderry13065/index.htm

Refer to Section 1.3 of the Contract for a list of the Contract Documents and their respective order of precedence.

1.5.1 Reference Materials

The Reference Materials are included in the RFP for the purpose of providing certain information to Proposers that is in NHDOT's possession. NHDOT has not determined whether the Reference Materials are accurate, complete or pertinent, or of any value to Proposers. The Reference Materials will not form a part of the Contract between NHDOT and the Design-Builder. Except as may be provided otherwise in the Contract Documents, NHDOT makes no representation, warranty or guarantee as to, and shall not be responsible for, the accuracy, completeness, or pertinence of the Reference Materials, and, in addition, shall not be responsible for any conclusions drawn therefrom.

1.6 GENERAL PROVISIONS REGARDING PROPOSALS

1.6.1 Proposal Contents

As used in this procurement, the term "Proposal" means a Proposer's complete response to the RFP, including a (a) Technical Proposal, and (b) Price Proposal. Requirements for the Technical Proposal and the Price Proposal are set forth in Exhibits B and C, respectively, and a checklist showing the required contents of the entire Proposal is found in Exhibit E. The Proposal shall be organized in the order listed in Exhibit E, and shall be clearly indexed. Each Proposal component shall be clearly titled and identified and shall be submitted without reservations, qualifications, conditions or assumptions. Any failure to provide all the information and all completed forms in the format specified or any submittal of a Proposal subject to any reservations, qualifications, conditions or assumptions will result in NHDOT's rejection of the Proposal until the Proposer completes the missing information. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms.

1.6.2 Inclusion of Proposal in Contract Documents

All portions of the successful Proposal will become part of the Contract Documents, as specified in the Contract. All other information is for evaluation purposes only and will not become part of the Contract Documents.

1.6.3 Commitments in the Proposal

The verbiage used in each Proposal will be interpreted and evaluated based on the level of commitment provided by the Proposer. Tentative commitments will be given no consideration. For example, phrases such as “we may” or “we are considering” will be given no consideration in the evaluation process since they do not indicate a firm commitment.

1.6.4 Ownership of Proposal and Applicability of NH Public Records Act

Subject to the exceptions specified herein, all written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, designs, and other graphic and visual aids submitted to NHDOT during this procurement process, whether included in the Proposal or otherwise submitted, become the property of NHDOT upon delivery to NHDOT, and will not be returned to the submitting parties.

All material submitted by Proposers, including Proposals, are subject to the provisions of the New Hampshire Right to Know Law (RSA 91A) (the “Public Records Act”) and any other laws and regulations applicable to the disclosure of documents submitted under this RFP. Such laws govern NHDOT’s use and disclosure of its records.

Proposers should familiarize themselves with the provisions of the Public Records Act requiring disclosure of public information, and exceptions thereto. In no event shall NHDOT or any of its agents, representatives, consultants, directors, officers or employees be liable to a Proposer or Proposer team member for the disclosure of any materials or information submitted in response to the RFP. See also Section 2.6.

1.7 PROJECT FUNDING AND FINANCING

NHDOT’s plan of finance contemplates that NHDOT, using Town of Derry, Town of Londonderry and federal funds, will fund the design and construction of the Project. Payments will be made in accordance with the Contract Documents.

1.8 FEDERAL REQUIREMENTS

1.8.1 General Obligations

Proposers are advised that the Project will require the use of federal funds. Accordingly, applicable federal law and Federal Highway Administration (“FHWA”) regulations, including those set forth in Appendix 14 to the Contract, will govern the Project’s procurement and contract documents. NHDOT reserves the right to modify the RFP to address any concerns, conditions or requirements of the FHWA. Proposers shall be notified by Addendum of any such modifications.

1.8.2 Buy America

Proposers are advised that the Project will require the Buy America provisions. Proposers should review all components of the project elements with respect to this requirement and inform the NHDOT of any concerns associated with meeting this criterion.

1.8.3 DBE Requirements

1.8.3.1 Project Goal and Requirements

NHDOT has determined that Disadvantaged Business Enterprises (DBEs) requirements apply to the design and construction of the Project, and has adopted a DBE Program to provide DBEs opportunities to participate in the business activities of NHDOT as service providers, vendors, contractors, subcontractors, advisors, and consultants. NHDOT has adopted the definition of DBEs set forth in 49 CFR § 26.5. Proposer's DBE compliance obligations shall be governed by all applicable federal DBE regulations, including Title 49 CFR Part 26, as well as applicable requirements set forth in the Contract Documents and NHDOT's DBE Program.

NHDOT's DBE requirements applicable to the Contract are adopted pursuant to Title 49 CFR Part 26. The DBE Participation goal for this Project is 3.0% for the combination of professional services and construction portions of the Work performed under the Contract. As set forth in Section 3.2.9 of Exhibit B, each Proposer shall submit a certification concerning DBE requirements with its Proposal. Failure to provide the required DBE certification shall be considered a breach of the Proposal requirements and shall render a Proposal non-responsive.

1.8.3.2 Information Relating to DBEs

Refer to Section 3.2.9 of Exhibit B for information regarding DBE submittal requirements. Failure to submit the required DBE information with the Proposal will be grounds for finding the Proposal non-responsive.

It is Proposer's responsibility to make enough Work available to DBEs and to select those portions of the Work or material needs consistent with the available DBEs to meet the goal for DBE participation or to provide information to establish that Proposer made adequate good faith efforts to do so. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

A DBE Proposer, not bidding as a joint venture with a non-DBE, will be required to document one or a combination of the following:

(a) Proposer will meet the goal by performing Work with its own forces;

(b) Proposer will meet the goal through Work performed by DBE Subcontractors, suppliers, or trucking companies;

(c) Proposer, prior to bidding, made adequate good faith efforts to meet the goal or commits to make good faith efforts over the entirety of the contract.

1.9 LABOR COMPLIANCE

Proposer is advised that Proposer must comply with all applicable requirements of the New Hampshire Department of Labor, Labor Laws, together with all applicable regulations, Proposer Nondiscrimination, and with all applicable federal labor requirements, including those set forth in Appendix 14 to the Contract.

2 PROCUREMENT PROCESS

2.1 PROCUREMENT METHOD

This RFP is issued pursuant to RSA 228:1 and RSA 228:4 (the "Code"), authorization New Hampshire Department of Transportation to enter into a Design-Build Contract. NHDOT will select the design-build contractor for the Project (the "Design-Builder") through a competitive sealed proposal method using best value selection criteria as authorized by the Code.

NHDOT will award the Contract (if at all) to the responsive and responsible Proposer offering a Proposal that meets the standards established by NHDOT and that is determined by NHDOT, through evaluation based upon the criteria set forth in the Section 5, the RFP, to provide the best value to NHDOT.

NHDOT will accept Proposals only from the shortlisted Proposers. Proposers will have an opportunity to offer Alternative Technical Concepts (ATCs) as described in Section 3 of this RFP. NHDOT will not review or consider alternative proposals or proposals with options outside of the specified approved ATCs.

Submission of the DBE Forms and Affidavit and a DBE Performance Plan, in accordance with Section 3.2.9 of Exhibit B, are required as conditions of eligibility for award of the Contract.

2.2 RECEIPT OF THE REQUEST FOR PROPOSAL DOCUMENTS, COMMUNICATIONS, AND OTHER INFORMATION

The RFP will be issued to shortlisted Proposers in electronic format on the website for the Project https://www.nh.gov/dot/projects/derrylondonderry13065/index.htm

NHDOT shall provide shortlisted Proposers with the address of the website that NHDOT will maintain related to this procurement. The website access criteria will be provided separately to each shortlisted Proposer and each will be required to treat the address as confidential information and to check the site regularly for addenda to this RFP and for other procurement related information.

2.2.1 Authorized Representative

NHDOT's Authorized Representative is as noted below:

Mr. Keith Cota, PE

Chief Project Manager

Phone: 603.271.2171

E-mail: mailto:Keith.Cota@dot.nh.gov

New Hampshire Department of Transportation

7 Hazen Drive Concord, New Hampshire 03302

Mailing address: P.O. Box 483 Concord, New Hampshire 03302-0483

Final proposal submissions in connection with this RFP should be directed to the following address:

New Hampshire Department of Transportation

7 Hazen Drive Concord, New Hampshire 03302

Mailing address: P.O. Box 483 Concord, New Hampshire 03302-0483

Attention: Mr. William Oldenburg, PE

Assistant Director of Project Development

Phone: 603.271.1484

E-mail: mailto:William.Oldenburg@dot.nh.gov

From time to time during the procurement process or during the term of the Contract, NHDOT may designate another Authorized Representative or Authorized Representatives to carry out some or all of NHDOT's obligations pertaining to the Project.

All correspondence shall be clearly labeled on the envelope:

Interstate 93 Exit 4A Project
"To be Opened by NHDOT Authorized Representative Only"

NHDOT will consider questions regarding the RFP submitted by Design-Build Teams in writing, including requests for clarification and requests to correct errors. All such requests must be submitted in writing via email or letter form to NHDOT's Authorized Agent before the deadline specified in Section 1.4. Only written requests will be considered. No oral requests or questions by phone will be accepted or considered. No requests for additional information or clarification to any other NHDOT office, consultant, employee, FHWA, or other agency will be considered.

2.2.2 Designation of Proposer Authorized Representative

On or before the date identified in Section 1.4, Proposer shall submit to NHDOT the name and address and email address of a representative authorized to receive documents, notices, and Addenda and act on behalf of Proposer relating to this procurement ("Proposer Authorized Representative"). Proposer shall further notify NHDOT of any changes in the representative or address for any notices or Addenda to be sent to Proposer by NHDOT. Failure to identify a Proposer Authorized Representative in writing may result in the Proposer failing to receive Addenda or other important communications from NHDOT. NHDOT is not responsible for any such failure.

2.2.3 Rules of Contact

From the date of issuance of the RFQ, the rules of contact provisions in the RFQ were applicable to this procurement. Starting on, the date the industry review package was issued, as identified in Section 1.4, and ending on the earliest of (i) execution and delivery of the Contract, (ii) rejection of all Proposals by NHDOT or (iii) cancellation of the RFP, the following rules of contact shall apply. These rules are designed to promote a fair and unbiased procurement process. Contact includes face-to-face, telephone, facsimile, electronic-mail (e-mail), or formal written communication.

The specific rules of contact are as follows:

(a) No Proposer nor any of its team members may communicate with another Proposer or its team members with regard to the RFP or either team's Proposal, except that (i) subcontractors that are shared between two or more Proposer teams may communicate with their respective team members so long as those Proposers establish a protocol to ensure that the subcontractor will not act as a conduit of information between the teams and (ii) this prohibition does not apply to public discussions regarding the RFP at any NHDOT sponsored informational meetings.

(b) Each Proposer shall designate one designated representative responsible for contacts with NHDOT, and shall correspond with NHDOT regarding the RFP only through NHDOT's Authorized Representative and the Proposer Authorized Representative.

(c) No Proposer or representative thereof shall have any exparte communications regarding the RFP or the procurement described herein with any member of the New Hampshire Department of Transportation, Town of Derry, Town of Londonderry, FHWA, and with any NHDOT staff, advisors, contractors or consultants involved with the procurement, except for communications expressly permitted by the RFP or except as approved in advance by the Authorized Representative, in his/her sole discretion. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFP or participation in public meetings of NHDOT, or any public or Proposer workshop related to the RFP.

(d) Any communications determined by NHDOT, in its sole discretion, to be improper may result in disqualification.

(e) Any official information regarding the Project will be disseminated in writing, on NHDOT letterhead, and signed by NHDOT's Authorized Representative or designee.

(f) NHDOT will not be responsible for any oral exchange or any other information or exchange that occurs outside the official process specified herein.

Proposer shall note that no correspondence or information from NHDOT or anyone representing NHDOT regarding the RFP or the Proposal process in general shall have any effect unless it is in compliance with Section 2.2.3.

2.2.4 Language Requirement

All correspondence regarding the RFP, Alternative Technical Concepts (ATCs), Proposal, and the Contract Documents are to be in the English language. If any original documents required for the Proposal are in any other language, Proposer shall provide a certified English translation, which shall take precedence in the event of a conflict with the original language.

2.3 QUESTION AND RESPONSE PROCESS, AND ADDENDA

2.3.1 Questions and Responses Regarding the RFP

Proposers shall be responsible for reviewing the RFP and any Addenda issued by NHDOT prior to the Proposal Due Date, and for requesting written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error or omission contained therein, or of any provision which Proposer fails to understand. Failure of Proposer to so examine and inform itself shall be at its sole risk, and no relief for error or omission will be provided by NHDOT. Proposers shall submit, and NHDOT will respond to, requests for written clarification in accordance with this Section 2.3.1. To the extent written responses are provided, they will be considered part of the Contract Documents.

NHDOT will only consider comments or questions regarding the RFP, including requests for clarification and requests to correct errors, if submitted by a shortlisted Proposer's Authorized Representative to the Authorized Representative by hard copy, facsimile, email or other electronic transmission in the prescribed format.

Such comments or questions may be submitted at any time prior to the applicable last date specified in Section 1.4 or such later date as may be specified in any Addendum. Questions and comments, including requests for clarification or interpretation, shall: (i) be sequentially numbered; (ii) specifically reference the relevant RFP volume, section and page number, unless such request is of general application (in which case the request for clarification shall so note); (iii) identify the relevant section number and page number or, if it is a general question, indicate so; (iv) not identify the Proposer's identity in the body of the question.

No telephone or oral requests will be considered. Proposers are responsible for ensuring that any written communications clearly indicate on the first page or in the subject line, as applicable, that the material relates to the Project. No requests for additional information or clarification to any person other than NHDOT's Authorized Representative will be considered. Written questions may be submitted only by the Proposer Authorized Representative, and must include the requestor's name, address, telephone and facsimile numbers, and Proposer he/she represents.

The questions with NHDOT's responses will be in writing and posted to the Project Website with email notice for availability of posting by NHDOT's Authorized Representative. No questions containing confidential or proprietary information relating

to Proposer's Proposal will be accepted. NHDOT reserves the right to disagree with Proposer's assessment regarding confidentiality of information in the interest of maintaining a fair process or complying with applicable Law. Under such circumstances, NHDOT will inform Proposers and may allow Proposer to withdraw the question, rephrase the question, or, if NHDOT determines that it is appropriate to provide a general response NHDOT will modify the question to remove information that NHDOT determines is confidential. NHDOT may rephrase questions, as it deems appropriate and may consolidate similar questions. NHDOT may also create and answer questions independent of the Proposers. NHDOT contemplates issuing multiple sets of responses at different times during the procurement process. Except for responses to questions relating to Addenda, the last set of responses will be issued no later than the date specified in Section 1.4. A consolidated, final set of questions and answers will be compiled and distributed prior to Final Award.

NHDOT may convene pre-proposal meetings with Proposers as it deems necessary (see Section 2.5), and Proposers must make themselves available to NHDOT for such pre-Proposal meetings and to discuss any matters they submit to NHDOT under this Section 2.3.1. If NHDOT determines, in its sole discretion, that its interpretation or clarification requires a change in the RFP, NHDOT will prepare and issue an Addendum.

2.3.2 Addenda

NHDOT reserves the right, in its sole discretion, to revise, modify or change the RFP and/or procurement process at any time before the Proposal Due Date (or, if Proposal Revisions are requested, prior to the due date for Proposal Revisions). Any such revisions will be implemented through issuance of Addenda to the RFP. Addenda will be posted on the website, and Proposers will be notified of the issuance of such Addenda. If any Addendum significantly impacts the RFP, as determined in NHDOT's sole discretion, NHDOT may change the Proposal Due Date. The announcement of such new date will be included in the Addendum. In addition, if the last date for Proposer to submit questions regarding the RFP have occurred or have changed, the Addendum will indicate the latest date for submittal of any clarification requests concerning the Addendum.

Proposer shall acknowledge in its Proposal Letter (see Exhibit D, Form A) receipt of all Addenda and question and answer responses. Failure to acknowledge such receipt may cause the Proposal to be deemed non-responsive and be rejected. NHDOT reserves the right to hold group meetings with Proposers and/or one-on-one meetings with each Proposer to discuss any Addenda or response to requests for clarifications. NHDOT does not anticipate issuing any Addenda later than five Business Days prior to the Proposal Due Date. However, if the need arises, NHDOT reserves the right to issue Addenda after such date. If NHDOT finds it necessary to issue an Addendum after such date, then any relevant processes or response times necessitated by the Addendum will be set forth in a cover letter to that specific Addendum.

2.4 PRE-PROPOSAL SUBMITTALS

Pre-Proposal Submittals are required as provided in Section 2.11 (regarding changes in a Proposer's organization) and Exhibit B, Section 3.2.5 (regarding Key Personnel). Proposers are required to designate authorized representatives in accordance with Section 2.2.2. In addition, any Proposer that wishes to submit an ATC pursuant to Section 3.2 must make a Pre-Proposal Submittal as described therein.

2.5 PRE-PROPOSAL MEETINGS

2.5.1 Informational Meetings

NHDOT does not intend to hold any joint informational meetings with the short-listed Proposers prior to the Proposal Due Date.

2.5.2 One-on-One Meetings

NHDOT intends to conduct one-on-one meetings with each Proposer and on such other dates designated by NHDOT in writing to the Proposers, to discuss issues and clarifications regarding the RFP and Proposer's ATCs. NHDOT reserves the right to change the contract if necessary based on information / issues raised during the one- on-one meetings.

The one-on-one meetings are subject to the following:

(a) The meetings are intended to provide Proposers with a better understanding of the RFP.

(b) NHDOT will not discuss with any Proposer any Proposal or ATCs other than its own.

(c) Proposers shall not seek to obtain commitments from NHDOT in the meetings or otherwise seek to obtain an unfair competitive advantage over any other Proposer.

(d) No aspect of these meetings is intended to provide any Proposer with access to information that is not similarly available to other Proposers, and no part of the evaluation of Proposals will be based on the conduct or discussions that occur during these meetings.

Persons attending the one-on-one meetings will be required to sign an acknowledgment of the foregoing rules and to identify all participants from Proposer whether attending in person or by phone.

2.5.3 Questions and Responses During One-on-One Meetings

During one-on-one meetings, Proposers may ask questions and NHDOT may provide responses. However, any responses provided by NHDOT during one-on-one meetings may not be relied upon unless questions were submitted in writing and NHDOT provided written responses in accordance with Section 2.3.1. The written questions and NHDOT's responses will be provided in writing to all Proposers, except to the extent such questions are deemed by NHDOT to contain confidential or proprietary information relating to a

particular Proposer's Proposal or ATCs.

2.5.4 Statements at Meetings

Nothing stated at any pre-proposal meeting or included in a written record or summary of a meeting will modify the ITP or any other part of the RFP unless it is incorporated in an Addendum issued pursuant to Section 2.3.2.

2.6 CONFIDENTIALITY/PUBLIC RECORDS ACT DISCLOSURE REQUESTS

2.6.1 Disclosure Waiver

Each Proposer, by submitting a Proposal to NHDOT in response to the RFP, consents to the disclosures described in this Section 2.6 and expressly waives any right to contest, impede, prevent or delay such disclosure, or to initiate any proceeding that may have the effect of impeding, preventing or delaying such disclosure, under the Public Records Act or any other law relating to the confidentiality or disclosure of information. Under no circumstances will NHDOT be responsible or liable to a Proposer or any other party as a result of disclosing any such materials.

2.6.2 Observers During Evaluation

Proposers are advised that non-participating observers may observe the Proposal evaluation process and will have the opportunity to review the Proposals after the Proposal Due Date. NHDOT has agreed to allow FHWA officials to observe the procurement process, which includes access to the Price Proposals.

2.6.3 Confidential Materials

NHDOT will accept materials clearly and prominently labeled "TRADE SECRET" or "CONFIDENTIAL" by the submitting party. In addition, each Proposal must include a cover sheet listing the pages and forms on which there is confidential information. Any such proprietary information, trade secrets or confidential commercial and Price information that a Proposer believes should be exempted from disclosure shall be specifically identified and marked as such. Blanket, all-inclusive identifications by designation of whole sections as containing proprietary information, trade secrets, or confidential commercial or Price information are discouraged and may be deemed invalid. Any specific proprietary information, trade secrets, or confidential commercial and Price information shall be clearly identified as such and shall be accompanied by a concise statement of reasons supporting the claim. NHDOT will endeavor to advise the submitter of any request for disclosure or release of any material properly labeled as proprietary, trade secret, or confidential so as to allow the submitter the opportunity to seek a court order to protect such materials from disclosure. Under no circumstances will NHDOT be responsible or liable to a Proposer or any other party as a result of disclosing any such labeled materials, whether the disclosure is deemed required by law, by an order of court, or occurs through inadvertence, mistake, or negligence on the part of NHDOT, or their respective officers, employees, contractors, consultants, or agents.

NHDOT will not advise a submitting party as to the nature or content of documents entitled to protection from disclosure under New Hampshire laws, as to the interpretation of such

laws, or as to definition of trade secret. The submitting party shall be solely responsible for all determinations made by it under applicable laws, and for clearly and prominently marking each and every page or sheet of materials with "TRADE SECRET" or "CONFIDENTIAL" as it determines to be appropriate. Each submitting party is advised to contact its own legal counsel concerning the effect of applicable laws to the submitting party's own circumstances.

2.6.4 Following Award

NHDOT will endeavor to keep the Proposal pricing information confidential within NHDOT (including its designees and consultants) until such time as a Proposer is selected for award, at which time NHDOT intends to disclose such information to individuals with a need to know it. Once the Contract is executed, some or all of such data may lose its protection. Each Proposer, by submission of a Proposal, agrees that it will not be grounds for protest if any member of NHDOT's selection committee or any evaluation team member becomes aware of a Proposer's price at any time during the review process.

2.6.5 Litigation

In the event of any proceeding or litigation concerning the disclosure of any material submitted by the submitting party, NHDOT will be a stakeholder retaining the material until otherwise ordered by a court or such other entity having jurisdiction with respect thereto, and the submitting party will be responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense and risk; provided, however, that NHDOT reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. All costs and fees (including attorneys' fees and costs) incurred by NHDOT in connection with any litigation, proceeding, or request for disclosure shall be reimbursed and paid by Proposer objecting to disclosure. Each Proposer shall be responsible for all of its own costs in connection with any litigation, proceeding, or request for disclosure.

2.6.6 Exceptions

The foregoing will not preclude NHDOT from using ideas contained in the Proposal in accordance with Section 2.6 and will not preclude NHDOT from releasing information as required in connection with any protest filed under Section 7.

2.7 NHDOT STUDIES AND INVESTIGATIONS

NHDOT has completed its initial site investigations and has provided this information in the Geotechnical Data Report. NHDOT anticipates additional investigative activities prior to the Proposal Due Date. To the extent NHDOT undertakes any additional investigative activities; the information obtained by NHDOT from such activities may be made available to Proposers in the Reference Materials. All information provided by NHDOT will be subject to the same limitations applicable to similar information furnished in the Reference Materials. Specifically, NHDOT makes no representation or warranty as to the accuracy, completeness or suitability of the additional information.

2.8 EXAMINATION OF RFP AND SITE ACCESS

2.8.1 Examination of RFP Documents

Each Proposer shall be solely responsible for examining, with appropriate care and diligence, the RFP Documents, including Reference Materials and any Addenda, and material posted on the website and for informing itself with respect to any and all conditions that may in any way affect the amount or nature of its Proposal or the performance of the Work, if Proposer enters into the Contract with NHDOT. Each Proposer is also responsible for monitoring the website for information concerning the RFP and the procurement. The Proposal Letter (Exhibit D, Form A) includes an acknowledgment that Proposer has received and reviewed all materials posted thereon. Any failure of Proposer to so examine and inform itself shall be at Proposer's sole risk, and NHDOT will provide no relief for any error or omission therefor.

Each Proposer is responsible for conducting such investigations as it deems appropriate in connection with its Proposal, regarding the condition of existing facilities and Site conditions, including Hazardous Materials, and permanent and temporary Utility appurtenances, keeping in mind the provisions in the Contract Documents regarding assumption of liability by Proposer. Proposer's receipt of NHDOT-furnished information does not relieve Proposer of such responsibility.

The submission of a Proposal shall be considered prima facie evidence that Proposer has made the above-described examination and is satisfied as to the conditions to be encountered in performing the Work, and as to the requirements of the Contract Documents.

2.8.2 Site Access; ROW

Any Proposers wishing to undertake soil borings and additional exploratory investigations on certain portions of the Project right-of-way (ROW) shall advise NHDOT of its proposed plan and obtain all necessary permits and approvals from Governmental Entities, the property owners and occupants.

NHDOT has determined that the project can be constructed within the State of New Hampshire, Town of Londonderry and Town of Derry property, after completion of all Rights Of Way easements and acquisitions shown in the BTC. If the Design Build Team proposes alternate construction methods outside of the current ROW and the Rights Of Way easements and acquisitions shown in the BTC, the Design Build Contractor will be responsible for securing any additional rights across the private property.

2.9 ERRORS

If Proposer identifies any mistake, error, or ambiguity at any time during the procurement process in any of the documents supplied by NHDOT, Proposer shall notify NHDOT of the recommended correction in writing in accordance with Section 2.3.1.

2.10 IMPROPER CONDUCT

2.10.1 Non-Collusion

Neither Proposer nor any of its team members shall undertake any of the prohibited activities identified in the Non-Collusion Affidavit (Exhibit D, Form F).

2.10.2 Organizational Conflicts of Interest

Proposers' attention is directed to New Hampshire code RSA 228:1 and RSA 228:4 as well as the organizational conflict of interest rules found in 23 CFR § 636, Subpart A, including 23 CFR § 636.116, which apply to this procurement. Proposers are advised that 23 CFR section 636.116(a)(2) may preclude certain firms and their subsidiaries and affiliates from participating on a Proposer team. Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

By submitting its Proposal, each Proposer agrees that, if an organizational conflict of interest is thereafter discovered, Proposer must make an immediate and full written disclosure to NHDOT that includes a description of the action that Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, NHDOT may, at its sole discretion, cancel the procurement, disqualify Proposer with a conflict, or take other action as necessary to mitigate the conflict. If Proposer was aware of an organizational conflict of interest prior to the award of the Contract and did not disclose the conflict to NHDOT, NHDOT may pursue remedies under the Contract Documents, at Law and/or in equity, including termination of the Contract, for default.

2.10.3 Restrictions on Participation

Proposers are advised that the following NHDOT advisors are precluded from participating in any of the Proposer organizations relating to this Project; providing technical, legal, or Price advice to Proposers; or directly discussing any aspect of the RFP with any Proposer:

(a) HDR, Inc.

(b) Fuss & O'Neill (Formerly CLD);

(c) Federal Highway Administration (FHWA)

In addition, any entity that is currently suspended, debarred or voluntarily excluded under 49 CFR Part 29 or is otherwise determined to be ineligible to participate in the federal-aid highway program is precluded from participating on any of the Proposer teams.

2.10.4 Participation on More than One Team

To ensure a fair procurement process, Equity Participants, Major Participants, and Guarantors of Proposer teams are forbidden from participating, in any capacity, including as a Guarantor, on another Proposer team during the course of the Project procurement. This prohibition extends to affiliated entities of Equity Participants, Major Participants and Guarantors. NHDOT reserves the right to disqualify any Proposer that fails to comply with this prohibition.

2.11 CHANGES IN PROPOSER'S ORGANIZATION

In order for a Proposer to remain qualified to submit a Proposal after it has been shortlisted, unless otherwise approved in writing by NHDOT, Proposer's organization as

identified in the SOQ must remain intact for the duration of the procurement process. If a Proposer wishes to make changes in the Major Participants identified in its SOQ, including, without limitation, additions, deletions, reorganizations, changes in equity ownership interests and/or role changes in or of any of the foregoing, Proposer shall submit to NHDOT a written request for approval of the change from NHDOT as soon as possible but in no event later than the applicable last date set forth in Section 1.4. Any such request shall be addressed to NHDOT at the address set forth in Section 2.2.1, accompanied by the information specified for such entities in the RFQ. If a request is made to allow deletion or role change of any Major Participant identified in its SOQ, Proposer shall submit such information as may be required by NHDOT to demonstrate that the changed team meets the RFQ and RFP criteria (pass/fail and technical). Proposer shall submit an original and five copies of each request package. NHDOT is under no obligation to approve such requests and may approve or disapprove in writing a portion of the request or the entire request at its sole discretion. Except as provided herein and in the Contract Documents, a Proposer may not make any changes in the Major Participants identified in its SOQ after the applicable last date set forth in Section 1.4. Between the applicable date set forth in Section 1.4 and execution of the Contract, NHDOT, in its sole discretion, will consider requests by Proposers to make changes in Proposers' organization based only on unusual circumstances beyond Proposer's control.

3 ALTERNATIVE TECHNICAL CONCEPTS

3.1 ALTERNATIVE TECHNICAL CONCEPTS GENERAL

Sections 3.1 through 3.6 set forth a process for pre-Proposal review of Alternative Technical Concepts (ATCs) conflicting with the requirements for design, and construction of the Project, or otherwise requiring a modification of the Technical Provisions. This process is intended to allow Proposers to incorporate innovation and creativity into the Proposals, in turn allowing NHDOT to consider Proposer ATCs in making the selection decision, to avoid delays and potential conflicts in the design associated with deferring of reviews of ATCs to the post-award period, and, ultimately, to obtain the best value for the public.

ATCs eligible for consideration hereunder shall be limited to those deviations from the requirements of the as-issued Contract Documents that result in performance and quality of the end product that is equal to or better than the performance and quality of the end product absent the deviation, as determined by NHDOT in its sole discretion. A concept is not eligible for consideration as an ATC if, in NHDOT's sole judgment, it is premised upon or would require (a) a reduction in Project scope, performance or reliability; (b) the addition of a separate NHDOT project to the Contract (such as expansion of the scope of the Project to include additional roadways), or (c) an increase in the amount of time required for ~~Substantial~~ Project Completion. ATCs that, if implemented, would require further environmental evaluation of the Project, may be allowed, provided that Design-Builder will bear the schedule and cost risk associated with such additional environmental evaluation. If Design-Builder is not able to obtain the approvals necessary to implement the ATC, Design-Builder will be obligated to develop the Project in accordance with existing approvals without additional cost or extension of time.

Any ATC that has been pre-approved may be included in the Proposal, subject to the conditions set forth herein. Any ATC not accepted shall not be included in the Proposal.

If a Proposer is unsure whether a concept is consistent with the requirements of the RFP or if that concept would be considered an ATC by NHDOT, NHDOT recommends that Proposer submit such concept for review as an ATC.

3.2 SUBMISSION OF POTENTIAL ATC CONCEPTS

Prior to the deadline for formal submission of Pre-Proposal ATCs, NHDOT will hold one round of one-on-one confidential Meetings (Round #2) with each Proposer (see Section 1.4 for date information). The Proposer shall~~may~~ submit in writing to NHDOT's contact person via email (as an attachment) any potential ATC concepts to be discussed during the meeting, the order in which each concept is to be discussed, the design disciplines that are involved in each concept, and as much of the information (in the format listed) from the executive summary requirements below as practical. The potential ATC concepts must be submitted a minimum of five (5) business days before the date set for the one-on-one meeting (Round #2).

The Proposer shall bring seven (7) hard copies of the information (and if necessary point out any updates) to the one-on-one meeting for the use of NHDOT representatives.

The first part of the meeting will consist of the Proposer presenting an overview of, and for NHDOT and the Proposer to discuss, the proposed approach to be used for the design and construction of the project, accompanied by the Proposer's proposed approach to traffic maintenance.

The second part of the meeting will consist of the Proposer presenting potential ATC concepts. This portion of the meeting will serve to provide a dialog between the Proposer and NHDOT relative to these concepts. NHDOT will provide guidance in relation to the ATC concepts that would definitely not be entertained and attempt to provide as much as practical, preliminary comments to ATC concepts it would possibly entertain.

The Proposer is reminded that following the one-on-one Meeting, formal submission of any ATC it wishes to pursue is required under the requirements Section 3.3.

3.3 PRE-PROPOSAL SUBMISSION OF ATCS

Proposer may submit ATCs for review to NHDOT at the address specified in Section 2.2.1, until the applicable last date and time for submittal of ATCs identified in Section 1.4. All ATCs shall be submitted in writing, with a cover sheet identifying Proposer and stating "Interstate 93 Exit 4A Project – Confidential ATCs." Proposer shall clearly identify the submittal as a request for review of an ATC under this ITP. If Proposer does not clearly designate its submittal as an ATC, the submission will not be treated as an ATC by NHDOT. ATC submittals shall include five copies of a narrative description of the ATC and technical information, including drawings, as described below.

3.3.1 Pre-Proposal ATC Submissions Shall Include

(a) A sequential ATC number identifying Proposer and the ATC number (multi-part or multi-option ATCs shall be submitted as separate individual ATCs with unique sequential numbers);

(b) A description and conceptual drawings of the configuration of the ATC or other appropriate descriptive information, including a traffic operational analysis, if appropriate;

(c) The locations where, and an explanation of how, the ATC will be used on the Project;

(d) Any changes in roadway or bridge requirements associated with the ATC, including cross section, length, superstructure and/or substructure construction and future maintenance requirements;

(e) Any changes in routine or capital maintenance requirements associated with the ATC, including ease of maintenance;

(f) Any changes in the anticipated service life of the item(s) comprising the ATC;

(g) Any reduction in the time period necessary to design and construct the Project resulting from implementing the ATC, including, as appropriate, a description of method and commitments;

(h) References to requirements of the RFP which are inconsistent with the proposed ATC, an explanation of the nature of the deviations from said requirements, and a request for approval of such deviations;

(i) Analysis justifying use of the ATC and why the deviation, if any, from the requirements of the RFP should be allowed;

(j) A preliminary analysis and quantitative discussion of potential impacts on vehicular traffic (both during and after construction), environmental permitting, Rights Of Way acquisitions, community impact, safety, and life-cycle Project and infrastructure costs, including impacts on the cost of repair, maintenance and operation;

(k) If and what additional right of way will be required to implement the ATC. Proposers are advised that they shall (i) be solely responsible for the costs of acquisition of any such right-of-way, and the costs for obtaining any necessary Environmental Approvals; (ii) not be entitled to any Change Order for time or money as a result of Site conditions (i.e., Hazardous Materials, Differing Site Conditions, geotechnical issues, Utilities, etc.) on such additional right of way; and (iii) not be entitled to any Change Order for time or money as a result of any delay, inability or cost associated with the acquisition of such right-of-way);

(l) A description of other projects where the ATC has been used, the degree of success or failure of such usage and names and contact information including phone numbers and e-mail addresses for project owner representatives that can confirm such statements;

(m) A description of added risks to NHDOT or third parties associated with implementing the ATC;

(o) An estimate of any additional NHDOT, Design-Builder and third-party costs associated with implementation of the ATC;

(p) An estimate of the Price adjustment, should the ATC be approved and implemented; and

(q) An analysis of how the ATC is equal to or better in quality and performance than the requirements of the Contract Documents.

Proposer shall not make any public announcement or disclosure to third parties concerning any ATC until after pre-approval (including conditional pre-approval) has been obtained. Following pre-approval (including conditional pre-approval), if a Proposer wishes to make any such announcement or disclosure, it must first notify NHDOT in writing of its intent to take such action, including details as to date and participants, and obtain NHDOT's prior written consent, in its sole discretion, to do so.

If implementation of an ATC will require approval by a third party (e.g., a governmental authority), Proposer will have full responsibility for, and bear the full risk of, obtaining any such approvals after award of the Contract and submission of data; provided, however, that NHDOT shall retain its role as liaison with any governmental authorities as more particularly described in the Contract Documents. If any required third-party approval is

not subsequently granted with the result that Proposer must comply with the requirements of the original RFP, Proposer will not be entitled to a Change Order for additional compensation or time under the Contract.

If NHDOT determines, based on a proposed ATC or otherwise, that the RFP contains an error, ambiguity or mistake, NHDOT reserves the right to modify the RFP to correct the error, ambiguity or mistake, regardless of any impact on a proposed ATC.

3.4 NHDOT REVIEW OF PRE-PROPOSAL SUBMISSION OF ATCS

NHDOT may request additional information regarding proposed ATCs at any time and will, in each case, return responses to each Proposer regarding its ATC on or before the applicable last date set forth in Section 1.4, provided that NHDOT has received all required and requested information regarding such ATC.

NHDOT's responses will be limited to one of the following statements:

(a) The ATC is acceptable for inclusion in the Proposal;

(b) The ATC is not acceptable for inclusion in the Proposal;

(c) The ATC is not acceptable in its present form, but may be acceptable upon the satisfaction, in NHDOT's sole discretion, of certain identified conditions which must be met or clarifications or modifications that must be made; or

(d) The submittal does not qualify as an ATC but may be included in Proposer's Proposal because it appears to be within the requirements of the RFP (NHDOT may not reject such submittal in the Proposal for the reason that it appears to be an ATC; provided, however, that should it turn out that such submittal is not within the requirements of the RFP, NHDOT reserves the right to require compliance with the requirements of the RFP. Proposer will be entitled to modify its Proposal, but will not be entitled to obtain a Change Order for additional compensation or time under the Contract).

NHDOT will make a preliminary determination on whether to accept and approve an ATC for submission. However, Proposer will be responsible for ensuring that the final submittal complies with the requirements of the RFP.

Approval of an ATC will constitute a change in the specific requirements of the Contract Documents associated with the approved ATC for that specific Proposer. Each Proposer, by submittal of its Proposal, acknowledges that the opportunity to submit ATCs was offered to all Proposers, and waives any right to object to NHDOT's determinations regarding acceptability of ATCs.

NHDOT's rejection of a pre-Proposal submission of an ATC will not entitle Proposer to an extension of the Proposal Due Date or the date that the ATCs are due; provided, however, that the foregoing shall not limit NHDOT's absolute and sole right to modify the Proposal Due Date or any other date in connection with this procurement.

NHDOT anticipates that its comments provided to a Proposer will be sufficient to enable Proposer to make any necessary changes to its ATCs. However, if a Proposer wishes additional clarifications regarding necessary changes, Proposer may provide a written request for clarifications under Section 2.3.1.

3.5 INCORPORATION OF ATCS IN THE CONTRACT DOCUMENTS

Following award of the Contract, the ATCs that were pre-approved by NHDOT and incorporated in the Proposal by the successful Proposer shall be included in the Contract Documents. If NHDOT responded to any ATC by stating that it would be acceptable if certain conditions were met, those conditions will become part of the Contract Documents. The Contract Documents will be conformed after award, but prior to execution of the Contract, to reflect the ATCs, including any NHDOT conditions thereto. Notwithstanding anything to the contrary herein, if Design-Builder does not comply with one or more NHDOT conditions of pre-approval for an ATC, or Design- Builder fails to obtain a required third party approval for an ATC, Design-Builder will be required to comply with the original requirements of the RFP without additional cost or extension of time as set forth in the Contract.

Following execution of the Contract, ATCs from unsuccessful Proposers which have received a stipend payment in accordance with Section 6.3 and at NHDOT's sole discretion may be presented to the selected Design-Builder for consideration of a NHDOT Change Order in accordance with the Contract.

3.6 CONFIDENTIALITY

Subject to the provisions of the Code, ATCs and all communications regarding ATCs will remain confidential until a decision is made to select a Proposer or cancel the procurement, at which time all confidentiality rights, if any, shall be of no further force and effect except as otherwise allowed under the Public Information Act, applicable Law, and Section 2.6 of the ITP.

4 REQUIREMENTS FOR SUBMITTAL OF PROPOSALS AND ACCEPTANCE OF DELIVERY BY NHDOT

4.1 GENERAL SUBMITTAL REQUIREMENTS

Each Proposal shall include a Technical Proposal and a Price Proposal meeting the requirements set forth in Exhibits B and C. The Proposal shall be submitted in sealed containers in the format and manner set forth in Sections 4.2 and 4.3.

4.1.1 Proposal Due Date

The completed Technical Proposal and Price Proposal shall be delivered at the location identified in Section 2.2.1 in sealed containers no later than the Proposal Due Date as set forth in Section 1.4.

The Escrowed Proposal Documents shall be submitted as outlined in Section 4.3.2 in sealed containers no later than the Escrowed Proposal Due Date as set forth in Section 1.4.

4.1.2 Signatures Required

The Proposal Letter (Exhibit D, Form A) shall be signed in blue ink by all parties making up Proposer, and shall be accompanied by evidence of signatory authorization as specified in Exhibit D, Form A.

4.1.3 Certified Copies

Where certified copies of the Proposal are required, Proposer shall mark the document or cover with the words “Certified True Copy” and have the mark oversigned by the Proposer Authorized Representative.

4.1.4 Consequences of Failure to Follow Requirements

Failure to use sealed containers or to properly identify the Proposal may result in an inadvertent early opening of the Proposal and may result in disqualification of the Proposal. Proposer shall be entirely responsible for any consequences, including disqualification of the Proposal, which result from any inadvertent opening if NHDOT determines that Proposer did not follow the foregoing instructions. It is Proposer’s sole responsibility to see that its Proposal is received as required. Proposals received after the time due will be rejected without consideration or evaluation.

4.1.5 Requirement to Submit a Compliant Proposal

The Proposal may not include any qualifications, conditions, exceptions to or deviations from the requirements of the RFP, except as contained in pre-approved ATCs (including conditionally pre-approved ATCs that have been revised to satisfy any conditions to approval). If the Proposal does not fully comply with the instructions and rules contained in this ITP, including the exhibits, it may be disqualified.

Each Proposal must be submitted in the official format, which is specified by NHDOT in the RFP. Proposer shall sign the original copy of the Proposal submitted to NHDOT. Multiple or alternate proposals may not be submitted.

Proposals may be considered non-compliant and may be rejected for any of the following reasons:

(a) If the Proposal is submitted in paper form or on disk other than that specified by NHDOT; if it is not properly signed; if any part of the Proposal is missing from the Proposal package, and/or if it otherwise does not meet the Proposal submittal requirements;

(b) If NHDOT determines that the Proposal contains irregularities that make the Proposal incomplete, indefinite, or ambiguous as to its meaning, including illegible text, omissions, erasures, alterations, or items not called for in the RFP, or unauthorized additions;

(c) If multiple or alternate Proposals are submitted or if the Proposal includes any conditions or provisions reserving the right to accept or reject an award or to enter into a Contract following award;

(d) If Proposer attempts to limit or modify the Proposal Security, if the Proposal Security is not provided (see Exhibit B, Section 3.3), and/or if requested information deemed material by NHDOT is not provided; and

(e) Any other reason NHDOT determines the Proposal to be non-compliant.

4.1.6 Format

The Proposal shall contain concise written material and drawings that enable a clear understanding and evaluation of both the capabilities of Proposer and the characteristics and benefits of the Proposal. Legibility, clarity, and completeness of the Technical Proposal and Price Proposal are essential. The Technical Proposal shall not exceed the page limitation set forth in Exhibit B, Section 2. No page limit applies to appendices and exhibits, however, NHDOT does not commit to review any information in appendices and exhibits other than those required to be provided; and the Proposal evaluation process will focus on the body of the Proposal and any required appendices and exhibits.

An 8.5-inch by 11-inch format is required for typed submissions and an 11-inch by 17-inch format is required for drawings, except that design drawings may be submitted on scroll mats not to exceed 34 inches in width (and such design drawings may be submitted on a USB flash drive in Adobe Acrobat (.pdf) format and in Bentley Microstation format). Preliminary schedule submissions shall include both a hard copy and the electronic files in pdf format.

Submittals must be bound with all pages in a binder sequentially numbered. Each section, including appendices, exhibits, and forms, must be separately and clearly tabbed. Printed lines may be single-spaced with the type font size being no smaller than 12 point (except that tables, figures, and schedules may use 10-point font). Pages may be printed double-sided. The use of 11-inch by 17-inch foldouts for tables, graphics, and maps is acceptable in the main body of the Proposal. Each 11 by 17-inch foldout will be considered one page. The use of section summaries is encouraged.

Proposals shall be written in the English language using English units and measurements in accordance with NHDOT standards.

4.1.7 Additional Requirements for Proposal Delivery

The completed Proposal and Escrowed Proposal Documents shall be submitted and delivered in sealed containers no later than the Proposal and Escrowed Proposal Documents Due Dates and times specified in Section 1.4. The Proposal is to be delivered to NHDOT at the address set forth in Section 2.2.1, except for the Escrowed Materials, which shall be delivered to the Escrow Agent as specified in Section 4.3.2:

Each binder of the Proposal shall be labeled to indicate its contents. The original Technical and Price Proposals shall be clearly identified as "original"; copies of the Proposals shall be sequentially numbered, labeled and bound.

4.2 TECHNICAL PROPOSAL SUBMITTAL

4.2.1 General

All of the binders comprising the original Technical Proposal, together with an electronic copy on one or more USB flash drives and the envelopes described in Section 4.2.2, shall be packaged in a single container, clearly addressed to NHDOT as provided herein, and labeled "[Proposer Name]: Original Technical Proposal for the Interstate 93 Exit 4A Project." Proposer shall provide **twelve (12)** certified hard copies of the Technical Proposal (except for the Proposal Security and Escrow Agreement). The containers that include the required hard copies of the Technical Proposal shall be labeled "Copies of Technical Proposal for the NHDOT Interstate 93 Exit 4A Project."

The electronic copy shall be in Adobe Acrobat (.pdf) format on USB flash drive(s); provided, however, that: (a) Proposal forms may be submitted in either Adobe Acrobat (.pdf) or Word format; and (b) corporate, partnership, joint venture and limited liability company documents (e.g., articles of incorporation, bylaws, partnership agreements, joint venture agreements and limited liability company operating agreements) may be submitted in hard copy and need not be submitted electronically.

4.2.2 Escrow Agreement

A copy of the Escrow Agreement shall be provided with the Technical Proposal, in a separate envelope labeled "[Proposer Name]: Escrow Agreement for the NHDOT Interstate 93 Exit 4A Project."

4.3 PRICE PROPOSAL SUBMITTAL

Portions of the Price Proposal shall be submitted directly to NHDOT and portions of the Price Proposal shall be submitted to escrow as set forth in Sections 4.3.1 and 4.3.2 below by the Proposal Due Date and Escrowed Proposal Document Due Date set for forth in Section 1.4, respectively.

4.3.1 Portions of Price Proposal Submitted Directly to NHDOT

One (1) original and **two (2)** certified copies of the Price Proposal (excluding the components identified in Section 4.3.2) shall be delivered to NHDOT at the address identified in Section 2.2.1. The documents shall be included in a sealed container labeled "[Proposer Name]: Price Proposal for the NHDOT Interstate 93 Exit 4A Project." The documents include the proposed Contract Price (Form N-1), the Cash Flow Adjustment Curve/Payment Curve (Form N-2), Completion Deadline (Form P), Proposal Price Value (Form O), and the Proposal Security (Form K-1 or K-2). All parts of the Proposal that indicate pricing information shall be included in the sealed Price Proposal container.

4.3.2 Portions of Price Proposal Submitted to Escrow

Proposer shall assemble and deliver in accordance with this Section 4.3.2 certain escrowed proposal documents ("EPDs") containing information regarding Proposer's assumptions made in determining the scope of work and calculating the Proposal prices and meeting all requirements of Section 21.1 of the Contract. Proposer shall submit its EPDs in hard copy and electronic copies in Adobe Acrobat (.pdf) format. The EPDs shall include detailed information from all subcontractors identified in the Proposal and any other potential subcontractors who provided data upon which the Proposal is based.

Proposer shall provide NHDOT with the name, address and contact information of Proposer's selected Escrow Agent by the applicable last date set forth in Section 1.4. Proposer shall submit one set of EPDs ("Escrowed Materials") to the Escrow Agent chosen by Proposer, along with three completed original Escrow Agreements executed by Proposer in substantially the form attached as Exhibit D, Form L by the date set forth in Section 1.4. The documents shall be in separately sealed containers labeled "[Proposer Name]: Escrowed Materials for the NHDOT Interstate 93 Exit 4A Project" and delivered to the Escrow Agent at the address identified in the Escrow Agreement, which shall be located in New Hampshire. The Escrow Agent chosen by Proposer must be unaffiliated with Proposer and otherwise must be free of any conflict of interest. A copy of the executed Escrow Agreement shall be included in the Technical Proposal as specified in Section 4.2.2.

4.3.3 Proposal Security

One (1) original and **two (2)** certified copies of the Proposal Security shall be provided with the Price Proposal, and shall be in a separate envelope labeled "[Proposer Name]: Proposal Security for the NHDOT Interstate 93 Exit 4A Project."

A Proposal will not be considered unless accompanied by a guaranty of the character and amount indicated in the proposal and made payable to the "Treasurer, State of New Hampshire." If the Proposer uses a bid bond, it shall be prepared as follows:

A. The bond shall be completed in a form acceptable to the Department, and

B. The bonding company issuing the bond shall be licensed to transact business in the State of New Hampshire, and

C. The bonding company shall be listed on the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies", as published by the United States Department of the Treasury, Fiscal Service, Circular 570, 2019 Revision.

D. In the event that any irregularities are contained in the bid guaranty, the Proposer will have seven (7) calendar days from the time the bids are opened to correct the irregularities. If such irregularities are not corrected to the satisfaction of the Department, the Proposal will be rejected.

4.4 CURRENCY

All required pricing and cost information shall be provided in US$ currency only.

4.5 MODIFICATIONS, WITHDRAWALS AND LATE SUBMITTALS

4.5.1 Modifications to a Proposal

A Proposer may modify its Price Proposal in writing prior to the specified time on the Proposal Due Date set forth in Section 1.4. The modification shall conform in all respects to the requirements for submission of a Proposal. Modifications shall be clearly delineated as such on the face of the document to prevent confusion with the original Proposal and shall specifically state that the modification supersedes the previous Proposal and all previous modifications, if any. If multiple modifications are submitted, they shall be sequentially numbered so NHDOT can accurately identify the final Proposal. The modification must contain complete Proposal sections, complete pages or complete forms as described in Exhibits B and C. Line item changes will not be accepted. No facsimile or other electronically transmitted modifications will be permitted.

4.5.2 Withdrawal and Validity of Proposals

Proposer may withdraw its Proposal at any time prior to the time due on the Proposal Due Date by means of a written request signed by the Proposer Authorized Representative. Such written request shall be delivered to the address in Section 2.2.1. A withdrawal of a Proposal will not prejudice the right of a Proposer to file a new Proposal, provided that it is received before the time due on the Proposal Due Date. No Proposal may be withdrawn on or after the time due on the Proposal Due Date and any attempt to do so will result in a draw by NHDOT upon the Proposal Security. Proposals shall initially be valid for a period of 120 days after the Proposal Due Date. NHDOT shall have the right to extend this period for up to an additional 12 months, provided that the Contract Price will be subject to adjustment in accordance with Section 12.1.4 of the Contract if NTP2 does not occur within 180 days after the Proposal Due Date. Any Proposer may elect, in its sole discretion, to extend the validity of its Proposal beyond the time periods set forth above.

4.5.3 Late Proposals

NHDOT will not consider any late Proposals. Proposals and/or modification or withdrawal requests received after the time for submittal of Proposals will be returned to Proposer unopened, without consideration or evaluation.

4.6 FORFEITURE OF PROPOSAL SECURITY

By submitting its Proposal, each Proposer understands and agrees that it shall forfeit its Proposal Security if: (i) it withdraws, repudiates or otherwise indicates in writing that it will not meet all or any part of its commitments made in its Proposal; (ii) it is selected for negotiations, but fails to provide NHDOT documents required as set forth in Section 5.11; or (iii) it is selected as the apparent best value Proposer, but fails to provide the documents required under Sections 6.1.

Any Proposal that contains a material alteration, as determined by NHDOT, in its sole discretion, to the ITP Forms, including any material alteration to the form of Proposal Security (Exhibit D, Forms K-1 and K-2), will be considered non-responsive and non-compliant. Alterations that have been approved in writing in advance by NHDOT will not be considered material. If a Proposal is deemed non-responsive or non-compliant, NHDOT may disqualify the Proposal from further consideration. Such disqualification will not result in the forfeiture of Proposer's Proposal Security.

Each Proposer, by submittal of its Proposal, shall be deemed to have agreed to the foregoing.

4.7 ACCEPTANCE OF DELIVERY BY NHDOT

NHDOT will provide a receipt for Proposals that are timely delivered to NHDOT as specified herein. Proposer will be responsible for obtaining a delivery receipt from the Escrow Agent and obtaining the Escrow Agent's signature on the Escrow Agreements.

An NHDOT representative will coordinate with Proposer to visit the Escrow Agent's office on or shortly after the Proposal Due Date to jointly examine the Escrowed Materials and obtain a fully executed copy of the Escrow Agreement.

4.8 COSTS NOT REIMBURSABLE

The cost of preparing the Proposal and any costs incurred at any time before final award and execution of the Contract, including costs incurred for any interviews, payments owing to Proposer's Escrow Agent and costs associated with Post-Selection Deliverables, shall be borne by Proposer, except for any costs paid in accordance with Section 6.3.

5 EVALUATION AND POST-SELECTION PROCESS

NHDOT intends to select the Proposer that offers the best value to NHDOT, considering price, technical, and other factors described in this Section 5. The intent of NHDOT in this evaluation process is to create a fair and uniform basis for the evaluation of the Proposals in compliance with all legal requirements governing this procurement.

The Proposal evaluation process will include an initial review of each Proposal for responsiveness and pass-fail criteria, followed by a subsequent responsiveness and qualitative evaluation of the Technical Proposal, a subsequent responsiveness and quantitative evaluation of the Price Proposal and a best value determination. The process may include a request for Proposal Revisions. The steps in the process and evaluation criteria are set forth in Sections 5.3 through 5.11. The evaluation and selection process is subject to modification by NHDOT, in its sole discretion.

The evaluation process will involve the following steps:

1. NHDOT evaluation committees will:

   (a) Evaluate the Proposals and determine which Proposer has offered the apparent best value Proposal based on the specific evaluation criteria set forth herein; and

   (b) Provide a recommendation to NHDOT Commissioner to award the Contract to the apparent best-value Proposer.

2. NHDOT Commissioner will issue Letter of Intent to Award the Contract to the Apparent Successful Proposer, pending Governor and Executive Council's approval.

The details of the evaluation and selection process are set forth more fully in this Section 5.

5.1 ORGANIZATION OF THE NHDOT EVALUATION COMMITTEES AND SUBCOMMITTEES

The I-93 Exit 4A Project Evaluation Team consists of the RFP Selection Committee (SC) with four primary support committees: the Technical Proposal Evaluation Committee, Price Proposal Evaluation Committee, Project Evaluation Support Group (PSEG) and Technical Advisory Committee.

The RFP Selection Committee ("SC") will oversee the Design-Build process and prepare a final recommendation for submission to the Director of Project Development for approval by the Chief Engineer. The SC will be comprised solely of NHDOT individuals.

The Technical Proposal Evaluation Committee ("TPEC") will conduct evaluation and consensus scoring of Technical Proposals, with assistance from the Technical Advisory Committee ("TAC") as necessary. The TPEC will be comprised of representatives from NHDOT, Town of Derry, and Town of Londonderry, and will be chaired by an NHDOT individual designated by NHDOT's Commissioner. The TPEC will be responsible for preparing consensus scoring recommendations of Technical Proposals for submission to the SC.

The Price Proposal Evaluation Committee ("PPEC") will conduct evaluation of Price Proposals for compliance with the RFP requirements. The PPEC will be comprised solely of representatives of NHDOT.

The TPEC and PPEC may receive support from the Project Evaluation Support Group (PESG) as needed. The PESG will be comprised solely of representatives of NHDOT's Project Development and Finance units, who will provide necessary contractual evaluation of required contract documentation.

The TAC may be comprised of advisors from NHDOT, FHWA, Town of Derry representatives, Town of Londonderry representatives and outside consultants who will offer advice on the technical aspects of each Technical Proposal. The primary responsibility of these advisors will be to assist the TPEC in making the educated and informed assessment of the individual strengths and weaknesses of the Technical Proposals. The TAC will not provide scoring of the Technical Proposals.

5.2 BEST VALUE DETERMINATION

The best value determination will be based on a **0-100** point scale. The Price Score will represent up to **70** points of the total score, and the Technical Score will represent up to **30** points of the total score. The determination of apparent best value shall be based on the highest Total Proposal Score computed based on the following formula:

Total Proposal Score (max. 100 points) = Price Score (max. **70** points) + Technical Score (max. **30** points)

The Price Score will be determined based on the following formula:

Price Score = (Lowest PV/PV) * 70

Lowest PV = Lowest Price Value submitted by a Proposer as determined pursuant to Section 5.6.

PV = Proposer's Price Value (Exhibit D, Form N-1) as determined pursuant to Section 5.6 of the Proposer being evaluated.

The Technical Score will be calculated based on the TPEC evaluation score for the Technical Proposal (maximum of 100 points) as described in Section 5.4. The Technical Score will be calculated using the following formula:

Technical Score = TPEC evaluation score * 0.30

5.3 PASS/FAIL AND RESPONSIVENESS EVALUATION

Upon receipt, the relevant committee will make the Technical Proposals available for review. It will be reviewed (a) for the Proposal's conformance to the RFP instructions regarding organization and format and responsiveness to the requirements set forth in the RFP and (b) based on the pass/fail criteria set forth below. Any Proposer that fails to achieve a passing score on any of the pass/fail portions of the evaluation may not be eligible for recommendation for award.

The Price Proposal will be opened in accordance with Section 5.6.1, after which the Price

Proposal will be reviewed for responsiveness in accordance with Section 5.3.2.

5.3.1 Technical Proposal

The Technical Proposal Responsiveness Committee will determine whether or not Technical Proposals are responsive and communicate said determination to the Contract Representative. The Technical Proposal Responsiveness Committee will be comprised of members of the TAC and will provide their recommendation on responsiveness of each Technical Proposal to the Technical Proposal Evaluation Committee Chairperson for final determination.

Proposals considered responsive pursuant to this Section may still be rejected as non-responsive at a later date if the Proposer fails to satisfy such additional responsiveness requirements as are specified elsewhere in this Section. The Department's determination of responsiveness in no way relieves the Proposer from meeting all contract requirements listed as part of this contract.

5.3.1.1 Non-curable Technical Proposal Defects

The Department will reject Proposals as non-responsive if any one of the following occurs:

A. The Technical Proposal is not properly delivered.

B. The Department has substantial evidence of collusion by the Proposers.

C. The Proposer adds any provision reserving the right to accept or reject an Award or a Contract.

D. The Proposer fails to provide a completed and signed Form A.

E. The Proposer fails to cure the Technical Proposal Responsiveness Requirements as set forth in the Project Requirements.

5.3.1.2 Curable Technical Proposal Defects

Proposers must cure, to the satisfaction of the Department, all Curable Technical Proposal Defects identified in the Notice of Technical Proposal Responsiveness within the timeframe allotted in such Notice. Failure to so cure all such Curable Technical Proposal Defects will result in forfeiture of Proposer's Proposal Guaranty and forfeiture of any claim to the Stipend. Curable Technical Proposal Defects include, but are not limited to, the following:

A. The Proposer fails to provide all the requested forms, excluding Form A;

B. The Proposer fails to meet all of the Technical Proposal Responsiveness Requirements as outlined in the RFP;

   1) The business form of Proposer and any entities that will have joint and several liability under the Contract, or will provide a guaranty (including any joint venture agreement, partnership agreement, operating agreement, articles of incorporation, bylaws or equivalent documents) is consistent with the requirements of the Project and Contract Documents, as applicable.

2) Proposer has provided a DBE certification in accordance with the requirements of Exhibit B, Section 3.2.9.

3) Proposer information, certifications, signed statements and documents as listed in Exhibit B, Section 3.2 are included in the Proposal and do not identify any material adverse information.

4) Proposer has delivered Proposal Security in the form of a complete, properly executed proposal bond that complies with the requirements of Exhibit B, Section 3.3.1.

5) The Preliminary Project Baseline Schedule provides for ~~Substantial~~ Project Completion on or prior to **June 27, 2024** assuming NTP1 no later than November 4~~**October 28**~~**, 2020**.

6) Technical Proposal meets all applicable RFP requirements.

C. The Technical Proposal is not in substantial compliance with the requirements of the Project Requirements, the General Conditions, or, in the Department's sole discretion, the intent of the Standards; and/or

D. The Proposer fails to indicate the Proposer's choice where the RFP clearly require a choice.

5.3.2 Price Proposals

Price Proposals will be evaluated based on the following pass/fail criteria:

If NHDOT determines that a Proposer is undercapitalized, it will offer Proposer the opportunity to meet the financial requirement through one or more guarantors acceptable to NHDOT.

(a) Proposer has provided a Price using Exhibit D, Form N-1 that complies with the requirements of Exhibit C.

(b) Proposer has provided a Cash Flow Adjustment Table/Payment Curve using Exhibit D, Form N-2 that complies with the requirements of Exhibit C.

(c) Proposer has provided a Completion Deadline using Exhibit D, Form P with the number of days to achieve ~~Substantial~~ Project Completion resulting in a ~~Substantial~~ Project Completion Date that is the same or sooner than shown on the Preliminary Project Baseline Schedule submitted with the Technical Proposal. The number of days/date shown on Form P shall agree with that shown in the Preliminary Project Baseline Schedule.

(d) Proposer has provided a Proposal Price Value, Exhibit D, Form O that includes the Contract Price from Form N-1 and the number of days to achieve ~~Substantial~~ Project Completion from Form P.

(e) Proposer has provided a properly executed Proposal Security (Exhibit D, Form K) that complies with the requirements of Exhibit C.

5.3.3 NHDOT Right to Exclude Proposals from Consideration or Waive Mistakes

Those Proposals not responsive to the RFP, or that do not pass the pass/fail criteria, may be excluded from further consideration, and Proposer will be so advised. NHDOT may also exclude from consideration any Proposer whose Proposal contains a material misrepresentation. NHDOT reserves the right to waive minor informalities, irregularities and apparent clerical mistakes, which are unrelated to the substantive content of the Proposals.

5.4 EVALUATION OF TECHNICAL PROPOSAL BY TPEC

After completion of the pass/fail and responsiveness review, the Technical Proposal will be evaluated by the TPEC based on the factors set forth below for determination of meeting the minimum criteria in the RFP and/or if the Technical Proposal brings additional benefits and/or value to the Project.

Each responsive Technical Proposal will be interpreted and evaluated based on the level of commitment provided by the Proposer. Tentative commitments will be given no consideration. For example, phrases such as “we may” or “we are considering” will be given no consideration in the evaluation process since they do not indicate a firm commitment.

5.4.1 Technical Proposal Evaluation Factors

The evaluation factors for the Technical Proposal are as follows:

Subfactors and their relative weighting are listed in Sections 5.4.1.1 through 5.4.1.5.

Evaluation Criteria	Maximum Points
Schedule Solutions	20
ROW Solutions	20
Technical Solutions	35
Project Management Plan	15
Quality Management Plan	10
Total =	100

The evaluation factors will be evaluated and rated using the rating guidelines specified in Section 5.4.2.

5.4.1.1 Schedule Solutions (20 points)

i. Construction Staging and Sequencing (5 points)

ii. Traffic Management on Folsom Road and Tsienneto Road (5 points)

iii. Traffic Management on I-93 (5 points)

iv. Preliminary Project Baseline Schedule (5 points)

5.4.1.2 ROW Solutions (20 Points)

i. Rights of Way Approach (10 points)
ii. ROW Sequencing (10 points)

5.4.1.3 Technical Solutions (35 points)

i. Utilities (5 points)
ii. Environmental Permitting, Mitigation and Impacts (5 points)
iii. Bridges and Structures (I-93, Rail Trail, Shields Brook, Tributary E, and walls as needed) (5 points)
iv. Roadway (5 points)
v. Construction Stormwater Management (5 points)
vi. Drainage (5 points)
vii. Aesthetic Design (5 points)

5.4.1.4 Project Management Plan (15 points)

The Project Management Plan evaluation subfactors are as follows:

i. General Project Management (3 points)
ii. Coordination with Stakeholders (2 points)
iii. Risk Management (2 points)
iv. Schedule and Cost Control Management (2 points)
v. Public Information and Communications (2 points)
vi. Environmental Management (2 points)
vii. Design Management (2 points)

5.4.1.5 Quality Management Plan (10 points)

The Quality Management Plan (QMP) evaluation subfactors are as follows:

i. General Quality Management (2 points)
ii. Quality Control Organization (2 points)
iii. Document Management Procedures (2 points)
iv. Design Quality Control Procedures (2 points)
v. Construction Quality Control Procedures (2 points)

The subfactors are listed in descending order of importance; provided, however, that a subfactor may have equal importance with the subfactors listed immediately above it.

See Exhibit B for details regarding the specific information concerning this factor to be submitted as part of the Technical Proposal.

5.4.2 Evaluation Guidelines

The TPEC will review the Technical Proposal with reference to the evaluation factors specified in Section 5.4.1, in accordance with the guidelines provided in this Section 5.4.2. The major categories of the Technical Proposal will be qualitatively evaluated and assigned a rating as follows:

ADJECTIVE RATING	DESCRIPTION
Excellent	The Proposal greatly exceeds the stated requirements/objectives, offering material benefits and/or added value, and providing assurance that a consistently outstanding level of quality will be achieved. There is very little or no risk that Proposer would fail to satisfy the requirements of the Contract Documents. Weaknesses, if any, are very minor and can be readily corrected. Significant unique and/or innovative characteristics are present.
Good	The Proposal materially exceeds the stated requirements/objectives and provides assurance that the level of quality will meet or exceed minimum requirements. There may be a slight probability of risk that Proposer may fail to satisfy the requirements of the Contract Documents. Weaknesses, if any, are minor and can be readily corrected. Little or minimal unique and/or innovative characteristics are present.
Fair	The Proposal marginally exceeds stated requirements/objectives and provides satisfactory assurance that the level of quality will meet or marginally exceed minimum requirements. There may be questions about the likelihood of success and there is risk that Proposer may fail to satisfy the requirements of the Contract Documents. Weaknesses are correctable or acceptable per minimum standards.
Meets Minimum	The Proposal meets stated requirements/objectives and provides satisfactory assurance that the minimum level of quality will be achieved. There may be questions about the likelihood of success and there is some risk that Proposer may fail to satisfy the requirements of the Contract Documents. Weaknesses are correctable or acceptable per minimum standards.

In assigning ratings NHDOT may assign "+" or "-" (such as, "Excellent -", "Good +", and "Fair +") to the ratings to better differentiate within a rating in order to more clearly differentiate between the technical evaluation factors and the overall Technical Proposals. However, NHDOT will not assign ratings of "Meets Minimum –" or "Excellent +."

The term "weakness," as used herein, means any flaw in the Proposal that increases

the risk of unsuccessful contract performance.

5.4.3 Technical Score

During the evaluation, each subfactor as described above will be assigned a rating by the TPEC, which will be converted to points. The points for each subfactor will be summed to determine the Proposal's score for each of the corresponding evaluation factors. The score of each of the evaluation factors will then be summed to arrive at the Technical Score for the Technical Proposal, with 100 maximum possible points. The Technical Score will be calculated using the following formula:

Technical Score = TPEC evaluation score (maximum 100) * 0.30

5.5 REQUESTS FOR CLARIFICATION

NHDOT may at any time issue one or more requests for clarification to the individual Proposers, requesting additional information or clarification from a Proposer, or may request a Proposer to verify or certify certain aspects of its Proposal. Proposers shall respond to any such requests within two Business Days (or such other time as is specified by NHDOT) from receipt of the request. The scope, length and topics to be addressed in clarifications shall be prescribed by, and subject to the discretion of, NHDOT.

Upon receipt of requested clarifications and additional information as described above, if any, the Proposals may be re-evaluated to factor in the clarifications and additional information.

5.6 EVALUATION OF PRICE PROPOSAL BY PPEC

After completion of the Technical Proposal evaluation, the Price Proposal Evaluation Subcommittee (PPEC) will evaluate the Price Proposal.

5.6.1 Price Proposal Opening

Unless changed by Amendments, the Price Proposals will be opened and the Department will read the Proposal Price and number of days to achieve ~~Substantial~~ Project Completion, at the location, time, and date specified in the Project Requirements. Proposers and their authorized agents, are invited to attend. Proposer are made aware that confidentiality is to be maintained until a final determination is made by NHDOT.

NHDOT's reading of the price and computation of overall Best-Value ratings at the opening does not constitute a final determination by the Department of whether the Price Proposal is responsive. The Department may refuse to read Price Proposals that are considered non-responsive.

5.6.2 Schedule Adjustment

NHDOT will factor into the evaluation particular costs to NHDOT that require adjustment to the Price based on a review of the Proposals. In such event, NHDOT will consider only the following adjustment factors in its evaluation, as valued by NHDOT in its sole discretion, of the cost of a Proposal to NHDOT. Fewer days proposed to achieve ~~Substantial~~ Project Completion by a Proposer relative to the other Proposals submitted will be considered an advantage worth **$10,000** per day.

To determine the number of days to be counted for this benefit, NHDOT will take the

lessor of:

(a) the number of days fewer a Proposer submits to achieve ~~Substantial~~ Project Completion than the latest date to achieve ~~Substantial~~ Project Completion shown by any other Proposer; or

(b) the number of days fewer a Proposer submits to achieve Substantial Completion less than the ~~Substantial~~Project Completion Date shown in Form P provided by NHDOT.

All Proposers will receive an adjustment to its Proposal Value equal to the number of days fewer to achieve ~~Substantial~~ Project Completion, as counted by the method stated above, x $10,000 per day.

The Project schedules (without cost information) will be provided with the Technical Proposals, evaluated for reasonableness by the TPES, and the corresponding difference in calendar days forwarded to the NHDOT Appointee, who will forward the information to the PPEC. The PPEC will compare the Project schedule information to the duration proposed in Exhibit D, Form O submitted with the Price Proposal for consistency.

5.6.3 Price Proposal Responsiveness

5.6.3.1 Non-Curable Price Proposal Defects

The Department will reject Price Proposals as non-responsive for any of the following reasons:

A. The Proposer failed to properly deliver the Price Proposal;

B. The Proposer failed to provide a completed and signed Exhibit D, Form N-1;

C. The Proposer failed to provide Exhibit D, Form N-2.

D. The Proposer failed to provide Exhibit D, Form P and/or the number of days shown on Form P results in a ~~Substantial~~ Project Completion Date later than June 27, 2024 or later than shown in the Preliminary Project Baseline Schedule submitted in the Technical Proposal.

E. The Proposer failed to provide Exhibit D, Form O.

F. The Proposer failed to submit a Proposal Guaranty conforming to the Proposal Requirements;

G. The Price Proposal contains any provision reserving the right to accept or reject an Award or a Contract or otherwise contains any unauthorized, conditional, or alternate bidding language; or

H. The Proposer fails to comply with any other provision in the Project Requirements that the RFP expressly indicates will cause Price Proposal rejection.

5.6.3.2 Curable Price Proposal Defects

The Proposer must cure, to the satisfaction of the Department, all Curable Price Proposal Defects within twenty-four (24) hours of the discovery and notification by NHDOT. Failure to cure all Curable Price Proposal Defects within said twenty-four (24) hour time period

will result in forfeiture of Proposer's Proposal Guaranty and any claim to the Stipend. Curable Price Proposal Defects include, but are not limited to, the following:

A. A price discrepancy between Form N-1 and Form N-2.

B. The Contract Price shown on Form O is different than that shown on Form N-1.

C. The number of days to achieve ~~Substantial~~ Project Completion shown on Form O is different than that shown on Form P.

D. Failure to provide properly completed DBE Price Proposal Form(s) or failure of the information in such form(s) to correspond precisely with the information in the "Technical Proposal DBE Compliance Review Form(s)" submitted with the Proposer's Technical Proposal; and

E. Failure to submit prices or signatures in ink or other non-erasable substance.

5.7 DETERMINATION OF THE APPARENT SUCCESSFUL PROPOSER

At the Price Proposal Opening, the Department will ~~publicly~~ announce the score of each Proposer's Technical Proposal. The Department will ~~publicly~~ determine the Total Proposal Score of each Proposer based on the formula for calculating the Total Proposal Score is set forth in Section 5.2:

The Proposal with the highest overall Total Proposal Score will be the Apparent Successful Proposal and its Proposer the Apparent Successful Proposer, contingent on the Department's determination that the Price Proposal meets the conditions for Award.

5.8 BLANK

5.9 AWARD OF CONTRACT

The Commissioner will receive the Proposals and the recommendations and supporting information provided by the Selection Committee Chairperson~~NHDOT Scoring Administrator~~, and may accept the recommendation or reject the recommendation and cancel the procurement. Within twenty (20) days of opening the price proposals, the Department will mail or fax (with confirmation receipt) a Letter of Intent to Award the Contract to the Apparent Successful Proposer, pending Governor and Council approval. The Intent to Award shall also indicate that the Department will award the Contract to the Apparent Successful Proposer if said Proposer fulfills the conditions of award stated in the letter. NHDOT will, at least (5) business days prior to submitting the proposed contract to the Department of Administrative Services, post the rand and score for each Proposer on the Project Website.

Award of the Contract will be conditioned upon (a) concurrence in award by FHWA, (b) receipt by NHDOT of all of the documents required to be provided prior to execution of the Contract under Section 6.1, (c) execution of the Contract by the Commissioner of NHDOT or designee.

The Commissioner's decision regarding Intent to Award the Contract shall be final.

5.10 FINALIZATION OF CONTRACT DOCUMENTS; POST-SELECTION PROCESS

NHDOT will proceed with the apparent best value Proposer to finalize the Contract

Documents concurrent with seeking Governor and Council Approval. By submitting its Proposal, each Proposer commits to enter into the form of Contract included in the RFP, except to fill in blanks and include information that the form of Contract indicates is required from the Proposal.

5.11 POST-SELECTION DELIVERABLES

5.11.1 Project Management Plan

During the post-selection period between the Intent to Award and Final Award of the Contract, the selected Proposer may, but is not required to, submit all or portions of the Project Management Plan for review, comment and possible pre-approval. NHDOT encourages such early submittal(s), and will attempt to provide comments to any such submittals generally in accordance with the process and timelines set forth in the Contract, but cannot guarantee that it will in fact undertake such review or provide comments or approval.

5.11.2 Documents to be Submitted Following Intent to Award

As a condition precedent to final award of the Contract, the successful Proposer shall deliver the following to NHDOT within ten days after notification of conditional award:

(a) Evidence that Proposer, each member of Proposer's team, and each member of other Major Participants that will transact business in the State are authorized to do so no earlier than 30 days prior to the Proposal Due Date. Such evidence may be in the form of (i) a certificate of good standing from the state of its organization, if such Proposer or Proposer team member is not organized or formed in the State of New Hampshire; (ii) a Certificate of Status from the New Hampshire Secretary of State; or
(iii) other evidence acceptable to NHDOT.

(b) If not previously submitted, a copy of the final organizational documents for Design-Builder and, if Design-Builder is a limited liability company, partnership or joint venture, for each member or partner of Design-Builder. The final form of the organizational documents may not differ materially from the draft organizational documents included with the Proposal.

(c) If security for Proposer's obligations under the Contract is required by NHDOT pursuant to Exhibit B, Section 3.3, the form of the proposed guarantees, which shall be in form and substance acceptable to NHDOT, in its sole discretion.

During the post-selection period, as a condition to final award, Proposer shall deliver to NHDOT, at the location identified in Section 2.2, drafts of the deliverables identified in Section 5.11.2, for pre-approval by NHDOT.

5.11.3 NHDOT Comments on Post-Selection Deliverables

NHDOT shall provide comments on any Post-Selection Deliverables required to be delivered to NHDOT hereunder within 14 days of the date of NHDOT's receipt of such deliverable. NHDOT shall have five Business Days to review and respond to subsequent submittals of the deliverable.

6 CONTRACT EXECUTION; POST-EXECUTION ACTIONS

6.1 EXECUTION AND DELIVERY OF CONTRACT

6.1.1 Contract Documents

Upon the successful finalization of the Contract Documents, and satisfaction of all conditions to award specified in this ITP other than this Section 6.1, NHDOT will deliver **five (5)** sets of execution copies of the Contract Documents to the selected Proposer, along with a number of sets of execution copies as reasonably requested by Proposer. The selected Proposer shall obtain all required signatures and deliver all of the execution sets to NHDOT within seven (7) Business Days of receipt, together with the required documents described in Section 6.1.2. If Design-Builder is a joint venture or a partnership, all joint venture members or general partners, as applicable, must execute the Contract. Within 15 Business Days of NHDOT's receipt of all required and compliant documents from Proposer, NHDOT will execute the agreements, retain four sets of the agreements and deliver the other executed sets to Proposer. Final award shall be deemed to have occurred upon delivery of the fully executed sets to Proposer.

6.1.2 Documents to Be Delivered By Proposer With Executed Contract

Proposer shall deliver the documents listed below to NHDOT concurrently with the executed Contract as a condition to execution of the Contract by NHDOT. On or before the date that NHDOT delivers the execution sets of the Contract to Proposer, NHDOT shall notify Proposer regarding the number of originals and copies required to be delivered:

(a) For each Proposer, its general partners and its joint venture members and each member of other [Major Participants], (i) a certificate of good standing from the state of its organization, if such Proposer or Proposer team member is not organized or formed in the State of New Hampshire; and (ii) a Certificate of Status from the New Hampshire Secretary of State, in each case dated no earlier than 30 days prior to the Proposal Due Date and in form and substance acceptable to NHDOT. If such documents are not available due to the form of organization of the entity, Proposer shall provide appropriate documents in form acceptable to NHDOT evidencing that it is qualified to do business in the State of its organization and the State of New Hampshire.

(b) For entities formed after submission of the Proposal, a copy of the entity's final organizational documents. The final form of the organizational documents may not differ materially from the draft organizational documents included with the Proposal.

(c) If security for Proposer's obligations under the Contract is required by NHDOT pursuant to Exhibit B, Section 3.3, Proposer shall submit one or more guarantees from guarantor(s) acceptable to NHDOT, in its sole discretion, together with appropriate evidence of authorization thereof.

(d) Evidence of approval of the final form, and of due authorization, execution, delivery and performance, of the Contract by Design-Builder and, if Design-Builder is a joint venture, by its joint venture members. Such evidence shall be in a form and substance satisfactory to NHDOT. If Design-Builder is a corporation, an appropriate officer of the corporation shall in the form of a resolution of its governing body certify such evidence. If Design-Builder is a partnership, such evidence shall be in the form of a resolution (or resolutions) signed by each of the general partners and appropriate evidence of authorization for each of the general partners, in each case, certified by an appropriate officer of each general partner. If Design-Builder is a limited liability company, such evidence shall be in the form of: (i) a resolution of the governing body of the limited liability company, certified by an appropriate officer of the company, (ii) a managing member(s) resolution, certified by an appropriate officer of the managing member(s), or (iii) if there is no managing member, a resolution from each member, certified by an appropriate officer of such member. If Design-Builder is a joint venture, such evidence shall be in the form of a resolution of each joint venture member (in the manner described above), certified by an appropriate officer of such joint venture member.

(e) A written opinion from counsel for Design-Builder, which counsel shall be approved by NHDOT (which may be in-house or outside counsel, provided that the organization/authorization/execution opinion shall be provided by an attorney licensed in the State of the formation/organization of the entity for which the opinion is rendered (i.e., Design-Builder, joint venture member, etc.) and the qualification to do business in New Hampshire and the enforceability opinion shall be provided by an attorney licensed in the State of New Hampshire), in substantially the form attached hereto as Exhibit D, Form M (with such changes as agreed to by NHDOT in its sole discretion); provided, however, that the organization/authorization/execution opinion for an entity formed or organized under the laws of the State of New Hampshire may be issued by an in-house or outside counsel not licensed in New Hampshire.

(f) Evidence of insurance required to be provided by Design-Builder under the Contract Documents;

(g) Evidence that Design-Builder and its Major Participants hold all licenses required for performance of the work under the Contract Documents;

(h) NHDOT approved DBE Performance Plan in accordance with the requirements of Section 1.8.3;

(i) A letter from a licensed Surety, rated in the top two categories by two nationally recognized rating agencies or at least A minus (A-) or better and Class VIII or better by A.M. Best and Company, signed by an authorized representative as evidenced by a current certified power of attorney, committing to provide a Performance Bond and Payment Bond, each in the amount specified and in the forms attached as Appendix 8 to the Contract. If multiple Surety letters are provided, the Proposal shall identify which Surety will be the lead Surety. The

commitment letter may include no conditions, qualifications or reservations for underwriting or otherwise, other than a statement that the commitment is subject to award and execution of the Contract and issuance of NTP1 and NTP2; provided, however, that the Surety may reserve in its letter the right to reasonably approve any material adverse changes made to the Contract Documents, but excluding any changes or information reflected in the Proposal, such as ATCs and Proposer commitments;

(j) The insurance policies, endorsements, and/or certificates required under Section 9 of the Contract;

(k) A letter signed by Proposer, Major Participant, and each Subcontractor listed in the Proposal indicating the commitment to work on the Project and the commitment of Proposer to retain the specified services of the designated Major Participant or Subcontractor; and

(j) Any other requirements identified by NHDOT during pre-award negotiations.

Proposers are advised that the Design-Builder will be required to hold a general contractor's license.

6.2 DEBRIEFINGS

All Proposers submitting Proposals will be notified in writing of the results of the evaluation process. Proposers not selected for award may request a debriefing. Debriefings shall be provided in NHDOT's sole discretion at the earliest feasible time after execution of the Contract. If conducted, an NHDOT representative familiar with the rationale for the selection decision and Contract award shall conduct the debriefing.

Debriefings shall:

(a) Be limited to discussion of the unsuccessful Proposer's Proposal and may not include specific discussion of a competing Proposal;

(b) Be factual and consistent with the evaluation of the unsuccessful Proposer's Proposal; and

(c) Provide information on areas in which the unsuccessful Proposer's Technical Proposal had weaknesses or deficiencies.

Debriefing may not include discussion or dissemination of the thoughts, notes, or rankings of individual members of the, TPEC, or PPEC, but may include a summary of the rationale for the selection decision and Contract award.

6.3 PAYMENT TO UNSUCCESSFUL PROPOSERS

Each unsuccessful Proposer submitting a responsive Proposal will be entitled to receive a stipend from NHDOT, provided that such Proposer has timely executed and delivered the Stipend Agreement (Exhibit F) to NHDOT. If no Contract is awarded, an additional stipend will be awarded to the highest ranked Proposer, provided that such Proposer has timely executed and delivered the Stipend Agreement. The successful Proposer shall not otherwise be entitled to a stipend under this Section 6.3 and shall only be entitled to such compensation as is set forth in the Contract. No unsuccessful Proposer shall be entitled to reimbursement for any of its costs in connection with this RFP except as specified in this Section 6.3.

The total available stipend amount per Proposer is $125,000. Refer to the Stipend Agreement for terms of payment. Please note that this stipend payment is anticipated be awarded to the eligible Proposers, however the ultimate disbursement is contingent to Governor and Executive Council's approval.

In consideration for NHDOT's agreement to make payment pursuant to the Stipend Agreement, each Proposer receiving a stipend agrees that NHDOT will be entitled to use any and all concepts, ideas and information contained in its Proposal (including proposed ATCs, techniques, methods, processes, drawings, reports, plans and specifications), without any further compensation or consideration to Proposer.

Each Proposer has the option of waiving the stipend by submitting a Waiver with its Price Proposal. If an unsuccessful Proposer elects to waive the stipend, NHDOT shall not use the Proposer's ideas or designs in connection with this Project procurement.

Each Proposer acknowledges that NHDOT will have the right to inform the successful Proposer, after award, regarding the contents of all Proposals for which stipends have been (or will be) paid, for the purpose of allowing concepts to be reviewed by the selected Proposer and incorporated into the Contract as deemed advisable. Furthermore, upon Proposer's receipt of payment hereunder, the right to use such Work product will extend to other projects undertaken by NHDOT, as NHDOT deems appropriate. However, NHDOT acknowledges that the use of any of the work product by NHDOT or Design-Builder is at the sole risk and discretion of NHDOT and Design- Builder, and it will in no way be deemed to confer liability on the unsuccessful Proposer.

As a condition to collection of the stipend, the Proposer must submit a request to NHDOT affirmatively and clearly stating, in a manner acceptable to NHDOT, in its sole discretion, that the Proposer will not contest NHDOT's award of the Contract and including an express and irrevocable waiver therefor. Such request shall be submitted within 7 days after notice of award is posted. Any Proposer that contests the award will not be eligible to receive a stipend.

In no event will any Proposer that is selected for award but fails to satisfy the award conditions set forth in Section 6.1 be entitled to receive the foregoing payment or any other reimbursement or payment for Work product under this Section 6.3. Any ideas contained in such Proposer's Proposal will be the property of NHDOT without any requirement to make payment therefor.

6.4 DISPOSITION OF ESCROWED MATERIALS FOLLOWING CONCLUSION OF PROCUREMENT PROCESS

Following execution of the Contract, the Escrowed Materials of the successful Proposer will be available for review as specified in the Contract Documents.

In accordance with the procedures set forth in the Escrow Agreement (Exhibit D, Form L), each unsuccessful Proposer shall have the right to retrieve its Escrowed Materials after the Contract Documents have been executed and delivered, after NHDOT rejects all of the Proposals or after NHDOT terminates this procurement.

7 PROTESTS

7.1 APPLICABILITY

This Section 7 set forth the exclusive protest remedies available with respect to the RFP and prescribes exclusive procedures for protests regarding:

(a) Allegations that the terms of the RFP are wholly ambiguous, contrary to legal requirements applicable to the procurement, or exceed NHDOT's authority;

(b) A determination as to whether a Proposal is responsive to the requirements of the RFP and/or passes all pass/fail criteria, as applicable; and

(c) Award of the Contract.

7.2 REQUIRED EARLY COMMUNICATION FOR CERTAIN PROTESTS

Protests concerning the issues described in Section 7.1(a) may be filed only after Proposer has informally discussed the nature and basis of the protest with NHDOT, following the procedures for those discussions prescribed in the RFP.

7.3 DEADLINES FOR PROTESTS

7.3.1 RFP Terms

Protests concerning the issues described in Section 7.1(a) must be filed as soon as the basis for the protest is known, but no later than 30 days prior to the Proposal Due Date, unless the protest relates to an Addendum to the RFP, in which case the protest must be filed no later than 5 business days after the Addendum is issued (but in any event, prior to the Proposal Due Date).

7.3.2 Responsiveness or Pass/Fail Determinations

Protests concerning the issues described in Section 7.1(b) must be filed no later than 5 business days after receipt of the notification of non-responsiveness or failure to pass all pass/fail criteria.

7.3.3 Contract Award

Protests concerning the issues described in Section 7.1(c) must be filed no later than 10 days after the earliest of the notification of intent to award, and the public announcement of the apparent best value Proposer.

7.4 CONTENT OF PROTEST

Protests shall completely and succinctly state the grounds for protest, its legal authority, and its factual basis, and shall include all factual and legal documentation in sufficient detail to establish the merits of the protest. Statements shall be sworn and submitted under penalty of perjury.

7.5 FILING OF PROTEST

Protests shall be filed by hand delivery on or before the applicable deadline to the address specified in Section 2.2.1, with a copy to the New Hampshire Attorney General Office, as soon as the basis for protest is known to Proposer. Proposer filing the protest shall concurrently submit a copy of the protest to the other Proposers whose addresses may be obtained from the website.

7.6 COMMENTS FROM OTHER PROPOSERS

Other Proposers may file statements in support of or in opposition to the protest within 7 days of the filing of the protest. NHDOT shall promptly forward copies of all such statements to the protestant. Any statements shall be sworn and submitted under penalty of perjury.

7.7 BURDEN OF PROOF

The protestant shall have the burden of proving its protest. NHDOT may, in its sole discretion, discuss the protest with the protestant and other Proposers. No hearing will be held on the protest. The protest shall be decided on the basis of written submissions.

7.8 DECISION ON PROTEST

The Commissioner or designee shall issue a written decision regarding the protest within 30 days after the filing of the detailed statement of protest. If necessary to address the issues raised in a protest, NHDOT may, in its sole discretion, make appropriate revisions to the RFP by issuing Addenda.

7.9 PROTESTANT'S PAYMENT OF COSTS

If a protest is denied, Proposer filing the protest shall be liable for NHDOT's costs reasonably incurred to defend against or resolve the protest, including legal and consultant fees and costs, and any unavoidable damages sustained by NHDOT as a consequence of the protest.

7.10 RIGHTS AND OBLIGATIONS OF PROPOSERS

Each Proposer, by submitting its Proposal, expressly recognizes the limitation on its rights to protest provided in this Section 7, and expressly waives all other rights and remedies and agrees that the decision on the protest is final and conclusive. If a Proposer disregards, disputes, or does not follow the exclusive protest remedies provided in this Section 7, it shall indemnify and hold NHDOT and its commission members, officers, employees, agents, and consultants harmless from and against all liabilities, fees and costs, including legal and consultant fees and costs, and damages incurred or suffered as a result of such Proposer's actions. Each Proposer, by submitting a Proposal, shall be deemed to have irrevocably and unconditionally agreed to this indemnity obligation.

8 NHDOT'S RIGHTS AND DISCLAIMERS

8.1 NHDOT RIGHTS

NHDOT may investigate the qualifications and Proposal of any Proposer under consideration, may require confirmation of information furnished by a Proposer, may require additional information from a Proposer concerning its Proposal, and may require additional evidence of qualifications to perform Design-Builder's obligations under the Contract Documents. NHDOT further reserves the right, in its sole discretion, at no additional cost to the Proposer, to:

(a) Develop the Project in any manner that it, in its sole discretion, deems necessary;

(b) Reject any or all of the Proposals;

(c) Modify any dates set or projected in the RFP;

(d) Cancel, modify or withdraw the RFP in whole or in part;

(e) Terminate this procurement and commence a new procurement for part or all of the Project;

(f) Terminate evaluations of Proposals received at any time;

(g) Modify the procurement process and terms of the RFP (with appropriate notice to Proposers)

(h) Waive or permit corrections to data submitted with any response to the RFP until such time as NHDOT declares in writing that a particular state or phase of its review of the responses to the RFP has been completed and closed;

(i) Permit submittal of addenda and supplements to data previously provided in a Proposal pursuant to a request for clarification issued by NHDOT until such times as NHDOT declares that a particular stage or phase of its review of the responses to the RFP has been completed and closed;

(j) Appoint evaluation committees to review Proposals, make recommendations, and seek the assistance of outside technical experts and consultants in Proposal evaluation;

(k) Disclose information contained in a Proposal to the public as described herein;

(l) Approve or disapprove Proposer's Key Personnel;

(m) Approve or disapprove changes in Proposer's organization;

(n) Accept a Proposal other than that which requests the lowest public funds from NHDOT;

(o) Waive deficiencies, informalities and irregularities in Proposals; accept and review a non-conforming Proposal or seek clarifications or modifications to

a Proposal;

(p) Not issue a notice to proceed after execution of the Contract Documents;

(q) Disqualify any Proposer that violates the terms of the RFP;

(r) Request Proposal Revisions as specified herein.

(s) Offer a Proposer the opportunity to cure its failure to meet required financial qualifications by providing a guaranty (or guaranties) of the Contract by a third party; and

(t) Exercise any other right reserved or afforded to NHDOT under the RFP and applicable law.

8.2 NHDOT DISCLAIMERS

The RFP does not commit NHDOT to enter into any contract. Except as expressly set forth in Section 6.3, NHDOT assumes no obligations, responsibilities, or liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to the RFP. All of such costs shall be borne solely by each Proposer and Proposer team.

In no event shall NHDOT be bound by, or liable for, any obligations with respect to the Project until such time (if at all) as the Contract Documents, in form and substance satisfactory to NHDOT, has been authorized and executed by NHDOT and, then, only to the extent set forth therein. In submitting a Proposal in response to the RFP, Proposer is specifically acknowledging these disclaimers.